



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

**Carer's Assistance (Carer
Support Payment) (Scotland)
Regulations 2023**

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 8 June 2023.

SCoSS/2023/03

Contents

Summary of recommendations and observations	4
Executive summary	9
1. Introduction.....	13
1.1 Overview.....	13
1.2 Human rights and principles.....	14
2. Aims of Carer Support Payment.....	16
3. Policy changes from Carer’s Allowance	19
3.1 “Cared for person”.....	20
3.2 Carers and education	21
3.2.1 Widening access to full-time students.....	21
3.2.2 Young people in non-advanced education	23
3.2.3 Potential complexity	26
3.2.4 Young Carer Grant.....	27
3.3 Past presence test	27
3.4 Nil awards.....	28
3.4.1 Whether the Act permits a £0 rate for earnings over the limit	29
3.4.2 UK qualifying disability benefits not ‘payable’ rather than ‘reduced to £0’	29
3.4.3 Qualifying disability benefit reduced to £0 because of Short-term Assistance.....	30
3.4.4 Passported benefits.....	30
4. Employment and earnings	32
5. Carer’s Allowance Supplement.....	37
6. Older carers.....	39
6.1 Older carers with underlying entitlement.....	39
6.2 Case transfer for older carers	42
7. Future changes	43
8. Regulations: areas for clarification	46

8.1 Meaning of terms	46
8.2 Choice of Young Carer Grant or Carer Support Payment	47
8.3 Definition of training	49
8.4 At age 16	49
8.5 Abatement	50
8.6 Backdating.....	52
8.7 Amount and form of Carer Support Payment	53
8.8 Multiple applications involving the same cared for person	54
9. Approach to scrutiny	56
Annexe A: External stakeholders	60
A1. Written call for evidence respondents	60
A2. External events held during the scrutiny period	60
Annexe B: Scrutiny timeline	61
Annexe C: About the Scottish Commission on Social Security.....	62
The Scottish social security principles	62

Summary of recommendations and observations

Recommendation 1: Carer Support Payment aims to recognise the vital caring role provided by unpaid carers which was not a stated aim of Carer's Allowance. The Scottish Government should work with carers and stakeholders to understand what changes to Carer Support Payment would provide that recognition and how wider carer support and services could be better joined up with social security.

Recommendation 2: Carer Support Payment's aims should be reinforced in communications with carers in order that they remain clear and unambiguous.

Recommendation 3: To ensure its policy on carers aged 16 to 19 is designed on the basis of good evidence, the Scottish Government should undertake research on the relationship between access to benefit for young carers, incentives to take on larger caring roles and the impact on remaining in education.

Recommendation 4: If research finds that carer benefits do not incentivise young people to take on larger caring roles, the Scottish Government should consider widening access to carers aged 16 to 19 in full-time non-advanced education.

Recommendation 5: The Scottish Government should consider extending Young Carer Grant to include 19-year-olds in non-advanced education who are not eligible for Carer Support Payment in order to address the eligibility gap for this age group from launch.

Recommendation 6: We welcome the provision to set Carer Support Payment to £0 when earnings are over the limit. However, the Scottish Government should consider redrafting it to avoid any potential incompatibility with enabling powers or contradictions within the regulations.

Recommendation 7: To avoid the potential for confusion, the Scottish Government considers setting out in draft regulation 23 the situations in which

a nil award of a qualifying disability benefit is intended to result in CSP being set to £0.

Recommendation 8: Regulations must clearly set out when one or another of the nil award provisions applies when a carer falls into more than one category. Award notices must also clearly set out which category the nil award comes under and explain to carers what the consequences of that are for their passported entitlement.

Recommendation 9: Given this is the first time that Social Security Scotland has administered an earnings test, the Scottish Government should detail plans to learn lessons so that any problems can be quickly identified and addressed, and improvements implemented in future benefit development including a review of staffing requirements.

Recommendation 10: To avoid overpayments developing, Social Security Scotland processes must respond quickly to changes in earnings identified through HMRC data feeds, and changes reported directly by individual carers.

Recommendation 11: The Scottish Government should work with carers to develop clear, easy to follow information so that carers can understand whether their earnings are below or above the earnings threshold. Information should be in a range of accessible formats and available from services and in locations where unpaid carers attend. This should include specific reference to how earnings are calculated.

Recommendation 12: The Scottish Government sets out the systems it plans to have in place to share data with the Department for Work and Pensions to ensure relevant changes in Carer Support Payment awards are quickly and accurately reflected in Universal Credit awards.

Recommendation 13: Appeal rights should be introduced against the recovery of overpayments.

Recommendation 14: The Scottish Government should consider writing off small sums of overpaid Carer Support Payment.

Recommendation 15: The Scottish Government should take steps from the launch of Carer Support Payment to deliver information, communication and processes tailored towards the needs of older carers to significantly improve their experience of the carers' benefit system.

Recommendation 16: Case transfer letters should link older carers with Social Security Scotland's Local Delivery service and other face to face services.

Recommendation 17: Redesigning the earnings rules and threshold should be a priority for the Scottish Government's plans for the future of Carer Support Payment.

Recommendation 18: The definitions of "couple" and "partner" in draft regulation 2 should be amended to reflect the definition used in the Welfare Reform Act 2012 and the Social Security (Scotland) Act 2018.

Recommendation 19: The Scottish Government should amend references to the "care rate" of Child Disability Payment and Disability Living Allowance to refer to "the care component" of these benefits at the middle or highest rate.

Recommendation 20: The Scottish Government should ensure that the draft regulations include all required definitions of qualifying benefits and overlapping benefits.

Recommendation 21: Regulations for Young Carer Grant and Carer Support Payment about moving from one of these benefits to the other should be more clearly and accurately expressed to meet the policy intention.

Recommendation 22: If Employability Fund activity is no longer operational, regulation 13(5) should be amended to remove it from the definition of approved training.

Recommendation 23: The Scottish Government makes its intention explicit regarding whether the lower age limit for Carer Support Payment is intended to be the 16th birthday or the minimum school leaving age.

Recommendation 24: The provision in draft regulation 17 to avoid duplicating payments to carers by offsetting arrears of Carer Support Payment against means-tested benefits paid for the same period should be amended to provide an accurate amount to offset taking account of changes during the abatement period.

Recommendation 25: The Scottish Government should include safeguards to ensure that backdating of Carer Support Payment is a right rather than being at the discretion of Scottish Ministers, with an appropriate degree of flexibility to allow for eligibility requirements being met and alignment with set award weeks.

Recommendation 26: The Scottish Government ensures that regulation 19 provides that an application for Carer Support Payment, made after a decision on a qualifying benefit, is backdated to the point at which the disability benefit entitlement begins rather than when the decision on disability benefit is made. It should also provide for decisions made by the Department for Communities in Northern Ireland.

Recommendation 27: Draft regulation 16(4)(a) should be amended to clarify the eligibility requirements which must continue to be satisfied by a carer following the death of a cared for person.

Recommendation 28: Draft regulation 16(3)(k) should be amended to separate Training Allowance and Contributory Employment and Support Allowance.

Recommendation 29: In deciding between claims to Carer Support Payment from “rival carers”, the views of the disabled person whose care is involved should be sought where possible.

Recommendation 30: The Scottish Government should work with the DWP to develop systems to adjudicate fairly and effectively between “rival carer “claims and entitlements to Carer Support Payment, Carer’s Allowance and Universal Credit carer element.

Recommendation 31: Regulations should make clear the scope of the multiple applications rule, the provisions for removing entitlement and the right of appeal.

Observation 1: We welcome the widening of access to many students who will now be able to keep Carer Support Payment when they would previously have faced a choice of either keeping Carer's Allowance or taking up opportunities for full-time study.

Observation 2: It is inherently confusing for carers and inefficient for the system to require applications from individuals who have an underlying entitlement and cannot be paid. We encourage the Scottish Government as they consider the future of CSP to work with the DWP on finding a better solution.

Observation 3: SCoSS welcomes being sent a full set of draft impact assessments relating to the draft regulations. In the light of limited data on some groups with protected characteristics, SCoSS also welcomes plans to tackle data gaps.

Executive summary

The draft regulations (The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023) provide for the introduction of Carer Support Payment (CSP) which replaces Carer's Allowance (CA) in Scotland. CSP aims to provide income for carers in recognition of their caring role and the impact on their lives, support them to access opportunities outside of caring, ensure carers have a positive experience of social security and maximise their take up of support. CSP is a non-means-tested, earnings-related benefit. It is a complex benefit with multiple interactions with reserved benefits.

Continuity and change from Carer's Allowance

During case transfer, many of the rules will mirror CA to avoid treating people in Scotland receiving CSP and CA differently. Despite this overriding focus on safe and secure transfer, there will be some significant changes from CA when CSP is introduced.

There is a widening of access to benefit for carers in education. In CA, only part-time students are eligible. For CSP, students aged 20 or over will be eligible regardless of the number of hours they study or the level of their course. Students aged 16 to 19 will be eligible in advanced education either full or part time. The widening of access to students is welcome. It gives carers more choice to take up opportunities for full-time study to develop skills, employment opportunities and have a life away from caring responsibilities. However, most young carers under 20 in full-time non-advanced education will see no change – they will not have access to CSP. The Scottish Government has said it wants to get the balance right between providing support and not incentivising or normalising young people taking on a larger caring role alongside their school-level education. This is a plausible risk to young carers' right to education, but not a view necessarily shared by carers and the organisations that support them. More evidence is needed on how young carers' education and caring roles are affected by the availability of a carers' benefit. There is a gap in provision for young carers aged 19, many of whom will have no access to either

Young Carer Grant or CSP. This could be addressed by extending Young Carer Grant to 19-year-olds.

There is a welcome change to the residency rules. Carers on CSP who come to the UK will be able to apply for CSP after 26 weeks instead of waiting two years as they do at present. This aligns the 'past presence test' with Child Disability Payment and Adult Disability Payment.

A £0 award will be introduced in certain circumstances to reduce the need to make a new claim when, for example, earnings exceed the permitted limit or a carer has a break in care of more than the permitted number of weeks. This may particularly benefit carers in work with fluctuating earnings and carers with fluctuating patterns of respite care. This kind of £0 award does not usually give carers access to passported benefits such as extra amounts for carers in Pension Credit. However, there is another kind of £0 award which does give carers access to passported benefits. This could be confusing for carers and may risk them missing out on passported benefits. Award notices will need to set out clearly which category of nil award provision applies and explain to carers the consequences for their passported entitlement to other financial help.

Employment and earnings

Carers in paid work can currently earn up to £139 a week and continue to receive CA. The introduction of a £0 award for carers who go over the earnings limit will remove the need to reapply for CSP in such circumstances and is a welcome improvement from the launch of CSP. However, the earnings limit and complex earnings rules are a barrier to some carers taking up paid work. Moreover, there are known issues with CA regarding the number of overpayments to carers in work, usually through accidental misunderstanding. There are plans under consideration, after case transfer from CA to CSP is complete, to increase the earnings threshold and introduce a 'run on' of support when earnings go over the limit. SCoSS considers this to be a priority as soon as possible after case transfer. Meanwhile, it is important that overpayments are minimised through the use of data sharing and

automated processes, that information to carers is clear and easy to follow and that appeal rights are introduced against the recovery of overpayments.

Carer's Allowance Supplement

Carers receiving CSP will be entitled to Carer's Allowance Supplement in the same way as carers in Scotland receiving CA. SCoSS has not had the opportunity to scrutinise regulations to add the supplement to CSP. However, we agree that the proposed change from a twice a year lump sum, to paying alongside regular CSP payments and consideration of other changes to the supplement should wait until case transfer from CA is complete.

Older carers

'Overlapping benefit' rules prevent people receiving more than one 'earnings-replacement' benefit at the same time. They have an 'underlying entitlement' to CA. Around a third of people who claim CA are affected by this rule. Most of them are carers who get a State Pension. This will be the same in CSP although it will be called a £0 award. It is still worth claiming because the £0 award gives entitlement to other passported benefits such as an extra amount in Pension Credit. Some older carers feel that the care they give is no longer recognised because of the loss of CA. The Scottish Government is considering, in the future, investing in a new payment to recognise the impact of caring on older carers and others who care for long periods of time. A 'recognition payment' of some kind would better align with the aims of CSP. Meanwhile, the experience of older carers of the benefits system must be significantly improved through tailored information, communication and processes.

Future changes

The rules and structure of CA are much the same now as they were in 1976 when it was first introduced. With CSP, there is an opportunity to update rules and address some longstanding concerns. It is welcome that the Scottish Government has already developed options and consulted with carers and stakeholders. This has informed changes from the launch of CSP such as widening access to students, and

resulted in commitments to introduce more improvements when case transfer is complete such as a new Carer's Additional Person Payment for those who care for more than one person. Changes to the structure and eligibility rules, beyond those being introduced from the launch of CSP, will be needed to achieve its aims.

Areas for clarification

CSP is probably the most complex benefit to be devolved to Scotland with multiple interactions with reserved benefits. It is a challenge to develop regulations that completely and accurately cover all the eligibility and administrative rules required. Through the scrutiny process, various changes to draft regulations were made in response to issues raised by SCoSS. This report sets out issues identified where the draft regulations for scrutiny did not clearly or accurately express the policy intention. For example, the rule to avoid duplicating payments by allowing arrears of CSP to be offset against payments of UK means-tested benefits (the 'abatement' rule) did not seem to produce a correct calculation in all cases. Another example involves applications from different people caring for the same person (sometimes referred to as 'rival carer' situations). These could involve entitlement to CSP, CA or Universal Credit carer element. A challenging degree of systems and processes working across Social Security Scotland the DWP will be needed to adjudicate fairly and clearly in these cross-jurisdiction situations.

1. Introduction

1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on The Carer's Assistance (Carer Support Payment (Scotland) Regulations 2023 (referred to in this report as the 'draft regulations').

Carers are defined by the Scottish Government as “people who provide care and support to family members, other relatives, friends and neighbours.” They are not paid workers and they are not volunteers. Their contribution is estimated to be of economic value of £13.1 billion per year to the Scottish economy¹ but it is invaluable to the many thousands of people they care for.

Despite this, carers in Scotland are more likely to have below average incomes and to live in areas of social deprivation² with nearly 60% of carers in receipt of Carer's Allowance (CA) also claiming an income-related benefit.³ Women are overrepresented in caring roles⁴ and carers often live with long-term health conditions themselves.⁵ A significant proportion of carers are aged 55 or over.⁶

In 2018, following the devolution of responsibility for carer benefits, the Scottish Government and the Department for Work and Pensions (DWP) entered into an agency agreement through which the DWP has continued to deliver CA to people in Scotland. After the necessary regulations have been approved by the Scottish Parliament, Carer Support Payment (CSP) will replace CA in Scotland and will be delivered by Social Security Scotland initially through a pilot in late 2023 followed by

¹ [National carers strategy \(www.gov.scot\)](http://www.gov.scot)

² [Scotland's Wellbeing: national outcomes for disabled people \(www.gov.scot\)](http://www.gov.scot)

³ [Carer's Allowance: Cost of Living Payments, Question for Department for Work and Pensions, tabled on 11 October 2022 \(parliament.uk\)](http://parliament.uk)

⁴ For the October 2022 Carer's Allowance Supplement eligibility date, 68.9% of payments were made to female carers. [Summary statistics for Carer's Allowance Supplement to October eligibility date 2022 \(socialsecurity.gov.scot\)](http://socialsecurity.gov.scot)

⁵ [Scotland's Census \(www.gov.uk\)](http://www.gov.uk)

⁶ 21% among those aged 55-64. Whilst the proportion of people caring over the age of 65 steadily decreases from this level it remains significant with 7% of those aged 75 and over providing care. [The Scottish Health Survey 2019 \(www.gov.scot\)](http://www.gov.scot)

a national launch in Spring 2024.⁷ The agency agreement with the DWP is expected to remain in place until all 125,514 carers entitled to CA in Scotland⁸ are transferred to CSP.

Many of the provisions in the draft regulations are broadly the same as the existing regulations for CA.

“This is to protect the safe and secure transfer of benefits for carers in Scotland who are already receiving CA, until the point that this transfer process is complete. It is also intended to avoid a ‘two tier system’ during this time in which carers receiving Carer’s Allowance and Carer Support Payment would otherwise be treated differently.”⁹

There are, however, some significant changes from CA which are intended to be introduced from its launch, particularly widening access to full-time students. We consider these changes in section 3 of this report.

The Scottish Government has committed to more changes once the transfer of carers on CA is complete, for example, introducing a Carer’s Additional Person Payment. These changes are outlined in section 7 of this report.

1.2 Human rights and principles

There is no dedicated international instrument setting out the human rights applicable to carers. However, the Northern Ireland Human Rights Commission (NIHRC) has published an extensive guide¹⁰ identifying a number of rights, or categories of rights, as particularly relevant to carers. Several merit particular consideration in SCoSS’s scrutiny of the draft regulations. The Scottish social security principles are listed in Annexe C. The principles are embedded in Our Charter which sets out what people can expect from the social security system.¹¹ As

⁷ [Carer Support Payment to be piloted by the end of this year - gov.scot \(www.gov.scot\)](https://www.gov.scot)

⁸ DWP StatXplore, November 2022.

⁹ [Policy Note, Draft Carer’s Assistance \(Carer Support Payment\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

¹⁰ [The Human Rights of Carers \(nihrc.org\)](https://nihrc.org)

¹¹ [Our Charter](#)

for other Scottish benefits, the principles and charter underpin policy development, regulations and delivery of CSP.

As a non-means-tested benefit for individual carers, CSP can offer a right to social security (principle b) and, alongside other benefits, contribute towards meeting the right to an adequate standard of living.¹² By providing an income for unpaid caring, CSP can to some extent support carers to combine caring with other family responsibilities thus contributing towards the right to respect for family life,¹³ although this is also dependent on whether social care services can offer carers and the person they support the opportunity to exercise choice and control over the care provided and received. Our Charter commitments to invest in people to ensure they can play a full and active part in society¹⁴ are particularly relevant to CSP. Carers may need this income to take part in social activities and to support the cared for person to do so.

Building on the positive response of carers to the ‘trust-based’ CA claims process, which does not routinely seek to assess daily care, contributes towards respecting the dignity of individuals (principle d) and expectations included in Part 1 of Our Charter.¹⁵

As CSP is a complex benefit with multiple interactions with reserved benefits, some charter expectations will be especially challenging to fulfil, for example communicating in a way that meets carers’ needs, consistent and accurate decision-making and improving take up.

The development of CSP has been characterised by the significant level of stakeholder engagement, research and consultation undertaken by the Scottish Government (principle f) and further engagement on longer-term changes is

¹² The right to an adequate standard of living is protected by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

¹³ The right to respect for family life is protected, for example, by Article 8 of the European Convention on Human Rights

¹⁴ [Our Charter](#), Part 4, Expectation 4: "Use social security powers to help ensure people can play a full and active part in society."

¹⁵ [Our Charter](#), Part 1: "A People's Service"

promised. This has been a visible demonstration of involving people with diverse lived experience of social security in developing policy as promised in Our Charter and designing policy with the people of Scotland on the basis of evidence (principle f). It has led to improvements in CSP some of which will be introduced from launch, such as widening access to carers in education.

Policy choices do not always fit neatly into one social security principle or another. There are overlaps and trade-offs. The limited scope for more improvement to CSP until everyone entitled to CA has transferred to CSP, in terms of the social security principles, is perhaps a trade-off between the principle of continuous improvement of the system (principle g) and that of delivering an efficient system which is value for money (principle h). However, the early planning for further improvement through research and consultation already undertaken offers opportunities to make improvements quickly once the transfer is complete. One such opportunity is to improve rights for unpaid carers who want to take paid work. The existence of a carers' benefit can enhance the scope for carers to choose between paid employment and unpaid care work. However, the earnings limit in CSP (and CA) could also act as a disincentive to paid work given how few hours a carer can work before reaching the limit.

CSP also represents an opportunity to advance equality and non-discrimination (principle g(ii)) especially as many recipients are expected to be women. That many carers could also be disabled has been recognised, and meeting this principle may entail reasonable adjustments to policy and practice.

2. Aims of Carer Support Payment

CA was intended to be an earnings-replacement benefit for those who had given up work to provide care.¹⁶ However, it is often misunderstood among carers as a

¹⁶ P19-20 House of Commons (1974) *Report on Social Security Provision for Chronically Sick and Disabled Persons*. (1973-74, HC 276)

payment in recognition of their caring role.¹⁷ Consequently, the purpose of CA is ambiguous and the policy objective unclear.¹⁸

The aims of CSP are:

- Aim 1: Carer Support Payment provides income for unpaid carers in recognition of their vital role and its impact on their lives. It is delivered in a way that takes into account that different carers have different needs, and that different caring situations have different impacts
- Aim 2: Carer Support Payment provides stability and supports carers to access opportunities outside of caring, where possible, and they wish to do so
- Aim 3: Carer Support Payment is designed to ensure carers have a positive experience of the social security system, and to maximise carers' take-up of all support available to them.¹⁹

The aims of CSP are wider than the earnings-replacement aims of CA. For example, CSP emphasises the contribution towards recognising unpaid carers' vital role, their life experiences beyond caring and their experience of the system.

Most respondents to the Scottish Government's public consultation supported the aim that CSP would not be a 'payment for care [but] provide some financial support and recognition for those who choose to, or who have had to give up or limit their employment or study because of caring responsibilities'.²⁰

One of the lessons from CA is that objectives can be misunderstood and miscommunicated, leading to confusion, lack of recognition and poor take up. By developing new aims through consulting with carers and the organisations that support them, and by stating the aims of CSP clearly from the start, the Scottish

¹⁷ National Audit Office (2009) [Supporting Carers to Care \(www.nao.org.uk\)](http://www.nao.org.uk); Berthoud, R. (2010) *The take-up of Carer's Allowance: A feasibility study* DWP WP 84

¹⁸ Fry, G. et al (2011) *Developing a clearer understanding of the Carer's Allowance claimant group*, DWP research report 739.; Berthoud, R. (2010) *The take-up of Carer's Allowance: A feasibility study* DWP WP 84

¹⁹ Carer Support Payment: Fairer Scotland Duty Assessment

²⁰ [Analysis of written responses to the consultation on social security in Scotland \(www.gov.scot\)](http://www.gov.scot)

Government has taken this lesson on board. This is a good foundation for ongoing communication with carers that makes it clear which aspects of CSP and the way it is delivered are meeting these new objectives.

Including recognition of the caring role as an aim of CSP has implications for the design of the benefit, particularly in how it will recognise the role of older carers, many of whom will be entitled to CSP but will not be paid because of overlapping benefits rules (see section 6.1). The Scottish Government is considering future changes to CSP intended to provide more recognition to older carers and others with long-term caring roles.

To fulfil the aims of supporting carers to access opportunities outside caring, and to maximise take up of all support available to them, the social security system will need to make improved connections with wider support for carers. The Government has proposed further work to ensure carers have information and advice on support available to them, including in the longer term to link carers to other services at key moments of transition, such as the start or end of a caring role.²¹ Monitoring how this work impacts on carers take up of wider opportunities and support should also be undertaken.

The development of CSP offers the Scottish Government an opportunity to consider the roles of both social security and social care in supporting carers' outcomes. The availability of social care can have a direct bearing on whether people undertake unpaid care, and, in turn, support from unpaid carers can also reduce the amount of social care provided.²² Unpaid carers should not be expected to take on or maintain a caring role they have not chosen due to inadequacies in social care.²³ An emphasis on recognising the value of caring, gives CSP a role in contributing towards meeting the National Carer's Strategy strategic outcome of recognising

²¹ Scottish Carer's Assistance consultation: [Scottish Government response \(gov.scot\)](#)

²² Disability and Carer Benefits Expert Advisory Group: [Scottish Carer's Assistance - letter to Cabinet Secretary for Social Security and Older People](#); Carer's UK: [Social Care](#); Scottish Women's Budget Group: [Towards A Transformative Universal Adult Social Care Support Service for Scotland](#)

²³ Disability and Carer Benefits Expert Advisory Group: [Scottish Carer's Assistance - letter to Cabinet Secretary for Social Security and Older People](#)

caring, which is also reflected in local and national policy-making.²⁴ Furthermore, there is an opportunity to develop the strategy further by aligning the relationship between carer benefits and social care towards achieving high-level desired outcomes for carers.

Recommendation 1: Carer Support Payment aims to recognise the vital caring role provided by unpaid carers which was not a stated aim of Carer's Allowance. The Scottish Government should work with carers and stakeholders to understand what changes to Carer Support Payment would provide that recognition and how wider carer support and services could be better joined up with social security.

Recommendation 2: Carer Support Payment's aims should be reinforced in communications with carers in order that they remain clear and unambiguous.

3. Policy changes from Carer's Allowance

From its launch, the rules for CSP are mostly intended to mirror CA. This is to allow the Scottish Government to transfer CA awards of people in Scotland safely and securely from the Department for Work and Pensions (DWP) to Social Security Scotland. Having the same rules also avoids creating a two-tier system where carers still getting CA are treated differently from people who have already transferred or have newly applied for CSP.

The Commission is clear that good operational delivery that gives people confidence in the continuity of their payments and can effectively administer new claims is critical. Changing the rules too much before the transfer is completed could risk undermining delivery with detrimental consequences for carers. Despite this overriding focus on safe and secure transfer, there will be some significant changes from CA when CSP is introduced:

²⁴ P41 [National carers strategy \(www.gov.scot\)](http://www.gov.scot)

- Changing the terminology from “severely disabled person” to “cared for person” to refer to the individual who is being cared for.
- Extending entitlement to students aged 20 or over in full-time education – currently only part-time students are eligible for CA. There is also a more limited extension for students aged 16 to 19.
- Reducing the past presence test to allow carers moving to the UK to claim after 6 months instead of the current 2 years.
- Introducing a £0 award in certain circumstances to reduce the need to make a fresh claim e.g. when earnings go above the earnings limit.

We consider these immediate changes below. We look at proposals for later changes in section 7 of this report.

3.1 “Cared for person”

There is a change in the term used to describe the person being provided with care. For CA, the term is “severely disabled person”.²⁵ For CSP, the term is “cared for person” (draft regulation 2). Although the name is different, the definition is essentially the same – someone to whom a qualifying disability benefit²⁶ is payable – so in practice there is no change to eligibility.

The Scottish Government considers the term cared for person to be a clearer and more straightforward way to refer to the individual in respect of whom the care is provided and the disability benefit is payable.²⁷

A majority of stakeholders told SCoSS that they preferred the term “cared for person”, including 97% of carers polled by the National Carer Organisations.²⁸

²⁵ Section 70(2) [Social Security Contributions and Benefits Act 1992 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

²⁶ Qualifying disability benefits are the daily living component of Adult Disability Payment and Personal Independence Payment, the middle or higher rate care component of Child Disability Payment and Disability Living Allowance, Attendance Allowance, Armed Forces Independence Payment and certain rates of Constant Attendance Allowance

²⁷ Scottish Government response to SCoSS question (response received 18 April 2023)

²⁸ National Carer Organisations response to SCoSS call for evidence, May 2023

“This is a more up to date term which is more reflective of the diverse range of conditions people receiving care might live with, whereas “severely disabled” is somewhat more limited in scope and may not align with how either the cared for person views themselves or how the unpaid carer sees their role.”²⁹

However, some stakeholders felt there could be better alternatives. The Experts by Experience Panel of the Poverty and Inequality Commission expressed the view that “cared for person” “attuned to a medical model and was not demonstrating an equal power relationship in the caring relationship.” They suggested that “person with high support needs” or “person you care for” may be better alternatives.

Overall, we consider the term to be an improvement which reflects the Charter commitment to “introduce more positive words to describe the service and the people who use it”.³⁰

3.2 Carers and education

3.2.1 Widening access to full-time students

Full-time students are not eligible for CA. The DWP’s rationale for excluding them is that young people who stay in full-time, non-advanced education are dependent on their parents who can continue to claim benefit for them, and older students and those in higher education should seek mainstream student grants and loans.³¹ Any payment of CA would duplicate this provision.

Stakeholders have long held the view that this limits carers’ ability to develop their skills, employment opportunities and a life away from their caring responsibilities.

²⁹ Health and Social Care Alliance response to SCoSS call for evidence, May 2023

³⁰ [Our Charter](#), Part 4, Expectation 7: “Change the language on social security - introducing more positive words to describe the service and the people who use it”

³¹ [Welfare and Wellbeing Group: Attendance allowance, disability living allowance and carer’s allowance: Retrospective equality impact assessment \(webarchive.nationalarchives.gov.uk\)](#)

“The current rule limits unpaid carers’ ability to live their own life alongside caring and is a barrier for them progressing their own education or future employment aspirations.”³²

The Scottish Government has decided to widen entitlement from the launch of CSP for all students over 20 and for some students aged 16 to 19.

Students aged 20 or over will be eligible regardless of hours of study or level of course. Students aged 16 to 19 will be eligible if they are in advanced education (e.g. degree level) regardless of hours of study. There is more limited widening of entitlement for students aged 16 to 19 in non-advanced education. They will be eligible for CSP, as they would be for CA, if they study on a course up to 21 hours a week. But they will not be eligible if they study full time, with very limited exceptions for some young people whose circumstances mean they could potentially claim Universal Credit.

The widening of access to students is welcome. There is evidence that the prospect of losing regular benefit income such as CA is a barrier to carers entering education. During the public consultation exercise, Parkinson’s UK Scotland³³ noted that “many unpaid carers have to leave education because they cannot afford to maintain their studies and caring responsibilities without paid employment” and Engender said that the rules “undermine women’s earning potential.”³⁴

Reducing this barrier should enable more carers to study and advance their employment prospects. Particularly for students over 20, this could, therefore, be seen as ‘an investment in the people of Scotland’ (principle (a)) and is likely to ‘advance equality’ for women who are more likely than men to be carers receiving CA (principle (g)(ii)).³⁵ It has been widely welcomed by stakeholders, including a

³² [National Carer Organisations response to Scottish Carer's Assistance consultation \(carers.org\)](https://www.carers.org)

³³ [Parkinson's UK Scotland response to Scottish Carer's Assistance consultation \(consult.gov.scot\)](https://consult.gov.scot)

³⁴ [Engender Response to Scottish Carer's Assistance consultation \(consult.gov.scot\)](https://consult.gov.scot)

³⁵ 69% of people who get Carer’s Allowance are women; [Social Security Scotland - Summary statistics for Carer's Allowance Supplement to October eligibility date 2022](https://www.scotland.nhs.uk)

focus group of young carers held by the National Carer Organisations who said this was “a positive change in the right direction.”³⁶

Observation 1: We welcome the widening of access to many students who will now be able to keep Carer Support Payment when they would previously have faced a choice of either keeping Carer’s Allowance or taking up opportunities for full-time study.

3.2.2 Young people in non-advanced education

There is limited widening of access for young people aged 16 to 19 in non-advanced education. They will be eligible for CSP if studying up to 21 hours a week as for CA. Young people studying more than 21 hours a week will be eligible for CSP if they are in particular situations. These are designed to match the circumstances in which young people could claim Universal Credit in their own right.

- They are estranged from their parents, or at risk if they live with their parents, or have no parental support because, for example, parents have died or cannot enter the UK.
- They have responsibility for a child.
- They are disabled themselves and before their course starts have been assessed by the DWP as having limited capacity for work.
- They are a foster parent.
- They are in a couple and their partner is not a student, or both are students and the partner is in one of the above situations too.

Most young carers under 20 in full-time, non-advanced education will not have access to CSP. The Scottish Government has said it wants to get the balance right

³⁶ National Carer Organisations response to SCoSS call for evidence, May 2023

between providing support and not incentivising or normalising young people taking on a large caring role alongside their school-level education.³⁷

For older students who already get benefit, the prospect of losing it could be a barrier to undertaking education. But the situation is different for young people. Where parents claim Child Benefit or UC child element for them, benefit continues while the young person remains in full-time, non-advanced education. Therefore, if the goal is supporting young people to exercise their right to education, widening access to CSP may be less likely to reduce barriers to young people entering education than is the case for older carers. If the goal is to avoid incentivising young people to take on a larger caring role which could itself become a barrier to them exercising their right to education, this is a plausible risk but there is a lack of evidence, and carers themselves assert the contrary.

The latest figures show that at least 30,000 young carers live in Scotland.³⁸ Carers Trust Scotland notes that young carers struggle to juggle their education and caring responsibilities which can cause pressure and stress.³⁹ The Commission sought views from carers about the continued exclusion of young carers in full-time, non-advanced education. They told us that they were in favour of widening access to this group. They did not see caring as a choice and did not think that young carers would spend more time caring in order to get benefit. They thought it unfair that young people who were less academic would be excluded.

“Not getting Carer’s Allowance would put some young people off education. It’s only that extra bit of support that means they can have any sort of independence.”

“For most young people this is not a choice they have. They haven’t been asked to take on a caring role and it’s not a life decision they’ve made. It just happened to them.”

³⁷ Scottish Carer's Assistance consultation: [Scottish Government response \(gov.scot\)](#)

³⁸ [Scotland’s carers: update release \(www.gov.scot\)](#)

³⁹ [National Strategic Education Project: Carers Trust Scotland \(carers.org\)](#)

“We have to protect young people taking on caring roles, but not letting young people follow the same rules feels discriminatory against them.”⁴⁰

Stakeholder organisations thought that excluding non-advanced courses could disincentivise learning opportunities for carers and could lead to some carers moving from non-advanced education “to destinations that are not positive, such as becoming unemployed”⁴¹ or to “leave school earlier in order to benefit from a more flexible timetable at college, whether this be part-time or full-time.”⁴²

“(Young carers) are reliant on having the right family arrangements that allow them to go to classes. Otherwise they can’t. They are more likely to be able to do this with additional resources.”⁴³

Some stakeholders thought that it was outdated to think that full time caring roles were incompatible with study. SCoSS also heard from academics who highlighted that young carers are often adept at arranging their own times and schedules to balance study and caring.⁴⁴

However, there was a view that carers are less likely to be able to combine caring and study and paid work. Many students need to work to supplement their student income. One young carer in a focus group held by National Carer Organisations said that they had taken on a part-time job in their final year at school which “has been difficult for them to manage alongside caring and greater financial support would be welcome.”⁴⁵ Young carers could therefore be disadvantaged compared to their peers which could be addressed by allowing them to access CSP to supplement student income in place of work.

⁴⁰ Participants at SCoSS carers event, 4 May 2023

⁴¹ Experts by Experience Panel of the Poverty and Inequality Commission response to SCoSS call for evidence, May 2023

⁴² National Carer Organisations response to SCoSS call for evidence, May 2023

⁴³ Participant at SCoSS carers event, 4 May 2023

⁴⁴ Academic comment at SCoSS roundtable, 30 March 2023

⁴⁵ National Carer Organisations response to SCoSS call for evidence, May 2023.

There appears to be a lack of evidence on the effect that access to benefit for young carers has on their caring and education choices and outcomes. This should be addressed in order to inform policy decisions.

Recommendation 3: To ensure its policy on carers aged 16 to 19 is designed on the basis of good evidence, the Scottish Government should undertake research on the relationship between access to benefit for young carers, incentives to take on larger caring roles and the impact on remaining in education.

3.2.3 Potential complexity

Notwithstanding whether access to CSP might be a barrier or enabler for young people in education, lack of access for one group introduces additional complexity.

A coalition of third sector organisations wrote to the Scottish Government in February 2023 arguing that excluding young carers in non-advanced education from CSP risks creating additional complexity.

“We know that young carers are often unsure whether they will be able to get carer’s allowance when they start, or return to, studying. Removing the full-time study rules entirely is the only way to get rid of this uncertainty and complexity.”⁴⁶

It would be simpler to treat 16 to 19-year-olds the same as older carers. Complexity means lower take up of benefit entitlement, more mistakes in decision making and more mistakes in individuals reporting relevant changes in circumstances. If the research we have recommended were to show that concerns about incentivising young people to take on larger caring roles were unfounded, it would be better to open access to CSP to this group. In the meantime, the Scottish Government should

⁴⁶ Letter from a coalition of carer organisations and welfare rights bodies to the Minister for Social Security and Local Government, 9 February 2023

take measures to reduce complexity where possible and to mitigate it where it is not possible.

Recommendation 4: If research finds that carer benefits do not incentivise young people to take on larger caring roles, the Scottish Government should consider widening access to carers aged 16 to 19 in full-time non-advanced education.

3.2.4 Young Carer Grant

Young Carer Grant (YCG) is available to young people aged 16 to 18. CSP will not be available to most young people in non-advanced education until the age of 20. Therefore most 19-year-olds will not have access to YCG or CSP. There are two obvious ways to address this: remove the age 19 exclusion from CSP or extend YCG entitlement to age 19. We understand that the Scottish Government intends to consider interactions with YCG further as part of a future change programme for CSP. SCoSS considers that with a relatively small investment, this gap between YCG and CSP could be filled by extending entitlement to YCG for 19-year-olds.

Recommendation 5: The Scottish Government should consider extending Young Carer Grant to include 19-year-olds in non-advanced education who are not eligible for Carer Support Payment in order to address the eligibility gap for this age group from launch.

3.3 Past presence test

Eligibility for CA depends on having been in the UK or Ireland for at least 104 weeks out of the last 156. This is in line with Personal Independence Payment which has the same two-year past presence test. The past presence test for Child Disability Payment and Adult Disability Payment was reduced to 26 weeks. Consequently, the CSP past presence test will also be reduced to 26 weeks (draft regulation 6(1)(e)). We welcome this change. It aligns the past presence test for a carer with the person they care for so if they were to come to the UK together, they could access benefit at the same time. It also improves the position for other carers coming to the UK.

3.4 Nil awards

Draft regulation 23(2) provides for an ongoing award of CSP to be set to £0 for up to 26 weeks where:

- The carer's earnings go over the earnings limit
- The cared for person's qualifying disability benefit is reduced to £0
- The carer has had a break in care of more than the permitted 4 or 12 weeks.

Currently, in CA, entitlement would simply end at this point. The carer would need to reapply when their circumstances changed. In the new system, carers whose CSP award has been set to £0 will not need to reapply within the 26-week period if earnings go down or the disability benefit payment resumes or the break in care ends. They will have a simpler process to report a change of circumstances online (using the change of circumstances form), by telephone, or using a paper form.

This is an improvement which has the potential to increase take-up of CSP, in line with charter expectations,⁴⁷ and could be of particular benefit to carers in work with fluctuating earnings or those managing patterns of respite care.

The introduction of nil awards in these circumstances was supported by the majority of unpaid carers (99%) polled as part of the National Carer Organisations response to SCoSS.⁴⁸

However, there are some issues with the regulation as drafted. We look at these issues in sections 3.4.1 to 3.4.4 below including the relationship between this provision and the other situation in which CSP is paid at a £0 rate – when there is entitlement to an overlapping benefit.

⁴⁷ [Our Charter](#), Part 4, Expectation 4: "Improve take-up, ensuring as many people as possible get what they are entitled to, making a particular effort to reach people who are most likely to be excluded.

⁴⁸ National Carer Organisations response to SCoSS call for evidence, May 2023

3.4.1 Whether the Act permits a £0 rate for earnings over the limit

Draft regulation 23(1)(a) sets CSP to £0 when two conditions are met: (1) earnings exceed the limit and (2) there is ongoing entitlement to CSP. However, according to draft regulation 14, an individual is not entitled to CSP at all in any week in which their earnings exceed the limit which suggests that the condition that there is ongoing entitlement is not and cannot be met. This seeming contradiction may not be compatible as drafted with the enabling powers in the Social Security (Scotland) Act 2018. Section 50 provides for a determination of entitlement to consist of a decision about whether eligibility rules are satisfied, and if they are satisfied then a decision about what assistance to give. A decision to give assistance at a nil rate (presuming eligibility rules are satisfied) is permitted elsewhere in the Act,⁴⁹ so in theory regulations could be drafted to avoid any seeming contradiction.

Recommendation 6: We welcome the provision to set Carer Support Payment to £0 when earnings are over the limit. However, the Scottish Government should consider redrafting it to avoid any potential incompatibility with enabling powers or contradictions within the regulations.

3.4.2 UK qualifying disability benefits not ‘payable’ rather than ‘reduced to £0’

Draft regulation 23(1)(b)(i) sets CSP to £0 when the cared for person’s qualifying disability benefit is ‘reduced to £0’. This wording is used in Scottish benefits, Child Disability Payment and Adult Disability Payment. CDP care component and ADP daily living component are ‘reduced to £0’, for example, after 28 days in a care home. However, regulations for UK benefits use different wording. They are ‘not payable’ in these circumstances. Although benefit being ‘not payable’ or ‘reduced to £0’ is not different in practice, the CSP regulations do not clearly and unambiguously refer to the specific situations intended to be covered. This could result in the law not

⁴⁹ Schedule 2, para 11A(2): [Social Security \(Scotland\) Act 2018](#)

being completely clear in some situations, for example, being remanded in custody, in which the rules on paying benefit differ between benefits.⁵⁰

3.4.3 Qualifying disability benefit reduced to £0 because of Short-term Assistance

When an individual gets a backdated award of Child Disability Payment or Adult Disability Payment after a redetermination or appeal, the payment for that backdated period is reduced to £0 if an individual was getting Short-term Assistance at the same or a higher level. This is to avoid double payment.⁵¹ In this situation, a carer can apply for CSP for the backdated period of the CDP or ADP award. This is provided for in draft regulation 19. Because there is no ongoing CSP entitlement during the redetermination or appeal, we assume that regulation 23(1)(b)(i) would not apply to reduce CSP to £0 despite the fact of there being a £0 award of the qualifying benefit. However, the potential for confusion does strengthen the case for this rule being tied in more explicitly to the situations it is intended to cover to avoid carers inadvertently losing CSP payment.

Recommendation 7: To avoid the potential for confusion, the Scottish Government considers setting out in draft regulation 23 the situations in which a nil award of a qualifying disability benefit is intended to result in CSP being set to £0.

3.4.4 Passported benefits

There is another important situation in which the amount of the CSP award is £0. That is where the carer is entitled to another 'overlapping benefit'. These are listed in draft regulation 16. The most common is State Pension. We comment more on this in section 6.1 of the report below. Here we focus just on the consequence of paying CSP at £0 when there is an overlapping benefit entitlement, and also paying CSP at

⁵⁰ [Prison and benefits factsheet, CPAG in Scotland](#)

⁵¹ For example, see Schedule 2, para 4, [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(www.legislation.gov.uk\)](#)

£0 when someone (temporarily) stops qualifying (e.g., when earnings are over the limit). There is a critical difference between the two types of £0 award.

- An overlapping benefit £0 CSP award gives entitlement to extra amounts in other means-tested benefits such as Pension Credit, Housing Benefit and Income Support, qualifies the carer for a Christmas bonus and exemption from the benefit cap. These are often referred to as ‘passport benefits’.
- A £0 CSP award when someone stops qualifying because of earnings or breaks in care, for example, does not generally give entitlement to passported benefits. An important exception is that a Universal Credit carer element continues despite earnings being over the limit.

Through the Scottish Government’s consultation process and in our call for evidence, stakeholders have said that paying CSP at £0 in different circumstances could confuse carers and risk them missing out on passported benefits.

“It is not clear that the claimant (nor indeed Social Security Scotland staff or advisers) would be able to tell the reason for the £0 payment, whether it was for one or both of the reasons. This would make it hard to know if the carer should be entitled to any additional support.”⁵²

As an example of the potential for confusion, a carer aged 66 may have their CSP award set to £0 under draft regulation 23 because of earnings. Then they start to get a State Pension. Is their CSP award still £0 under draft regulation 23 or is it now set to £0 under the overlapping benefit provision in draft regulation 16? For CA, in these circumstances, a carer would simply not be entitled if earnings were over the limit.

Recommendation 8: Regulations must clearly set out when one or another of the nil award provisions applies when a carer falls into more than one category. Award notices must also clearly set out which category the nil award

⁵² CPAG in Scotland response to SCoSS call for evidence, May 2023

comes under and explain to carers what the consequences of that are for their passported entitlement.

4. Employment and earnings

Carers in paid work can earn up to a set threshold, currently set at £139 a week (draft regulation 14). If earnings are below the threshold, the full amount of CSP is paid. If earnings are above the threshold, the award is set to £0 (draft regulation 23).

The way that earnings are calculated for CA is complex.⁵³ Ideally, they would have been simplified for the launch of CSP.⁵⁴ However, the Scottish Government has told SCoSS that it was not “possible to make significant changes while maintaining our commitment to mirror Carer’s Allowance and protect safe and secure transfer.”⁵⁵

From a short SCoSS survey of stakeholders,⁵⁶ draft regulations in Schedule 2 appear to have met the Scottish Government’s intention to mirror the CA rules. However, stakeholders would have welcomed some simplification of the rules but were unsure of the extent to which this was possible. They noted that any simplification would need to consider the impact on passported benefits.

The earnings threshold and complicated earnings rules have consequences for carers and for the administration of CSP.

Administering an earnings test is inherently complicated. Social Security Scotland staff will need to develop skills quickly. The Scottish Government has said that the complexity of the process means there will need to be a mix of automated systems and processes, and manual client adviser processes e.g. manual processes for

⁵³ [The Social Security Benefit \(Computation of Earnings\) Regulations 1996 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁵⁴ An Upper Tribunal judge trying to make sense of the regulations previously said they would “benefit from being reconsidered, if not redrafted.” [CG/1239/2008, \[2008\] UKUT 23 \(AAC\), DC v Secretary of State for Work and Pensions](#)

⁵⁵ [Draft Carer’s Assistance \(Carer Support Payment\) \(Scotland\) Regulations: update for SCoSS \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

⁵⁶ Draft regulations on earnings were provided late in the scrutiny process so were not included in SCoSS’s initial consultation with stakeholders

cases with fluctuating earnings or earnings from self-employment.⁵⁷ Staffing will need to be at adequate levels to cope with the complex manual processes.

Recommendation 9: Given this is the first time that Social Security Scotland has administered an earnings test, the Scottish Government should detail plans to learn lessons so that any problems can be quickly identified and addressed, and improvements implemented in future benefit development including a review of staffing requirements.

Overpayments are more likely to occur with CSP than other Scottish benefits. Systems need to be designed to reduce the risk of overpayments, reduce the impact on carers of recovering overpayments from them and ensure carers have the right to appeal against recovery.

There are lessons to be learned from recent experience of overpayments of CA. In 2019, the UK Parliament's Work and Pensions Committee carried out an inquiry following an investigation by the National Audit Office that highlighted overpayments of CA being recovered from 80,000 carers (in the period between 2016-2019) totalling around £150 million. The Committee noted that, in theory, the DWP should be spotting these errors, "because it has access to data about carers' earnings from HMRC". The Scottish Government will also have access to information from HMRC (data on the amount of taxable pay, payment date and frequency).⁵⁸ While many overpayments were for short periods of time, in some cases overpayments continued for more than a decade before they were discovered. Most overpayments arose because carers failed to notify the DWP about their earnings. By value, around 70% of overpayments are because carers' earnings are over the earnings limit.⁵⁹

The Work and Pensions Committee's inquiry heard evidence that repaying overpayments can cause carers significant distress and anxiety and recommended a case-by-case review on whether overpayments were worth pursuing given the cost

⁵⁷ Scottish Government response to SCoSS question, April 2023

⁵⁸ Scottish Government response to SCoSS question, April 2023

⁵⁹ [National Audit Office \(2019\) Investigation into overpayments of Carer's Allowance \(nao.org.uk\)](https://nao.org.uk)

for the DWP and the impact on the carer and cared for person. Carers have also highlighted that communication from the DWP about their obligations in this regard is limited and should improve. The Work and Pensions Committee also concluded that the design of CA itself – including the “cliff edge” earnings limit – had been a contributing factor leading to overpayments.

With CSP rules being very similar to CA rules, there can be little doubt that confusion over earnings rules and overpayments will also be a feature of the system in Scotland. It may be possible in the future to simplify CSP rules and in doing so not only lessen the risk of overpayments but also reduce the extent to which CSP acts as a barrier to carers exercising their right to take paid employment if they choose. The Scottish Government has already consulted on proposals to increase the earnings threshold and introduce a ‘run on’ of support when earnings go over the threshold. However, these proposals are being considered for the future after case transfer is complete.⁶⁰

Meanwhile, there are other ways to reduce the number and size of overpayments, to lessen the impact of recovery on carers and to avoid carers falling out of the system when earnings go over the limit.

“I got backdated wages in Nov, then a training day in Dec which took my earnings [over the limit] so my claim was stopped. Sent away my pay slips for Nov, Dec, Jan and Feb to show wages are back to "normal" but still haven't heard anything. I would definitely be entitled to it again in April anyway but haven't heard anything.”⁶¹

Recommendation 10: To avoid overpayments developing, Social Security Scotland processes must respond quickly to changes in earnings identified through HMRC data feeds, and changes reported directly by individual carers.

⁶⁰ Scottish Carer's Assistance consultation: [Scottish Government response \(gov.scot\)](https://www.gov.scot)

⁶¹ Participant at SCoSS carers event, 4 May 2023

The Scottish Government has already taken a step to simplify the process for carers whose earnings go over the limit. Draft regulation 23 introduces nil awards (see section 3.4 above) which removes the requirement to reapply for CSP in most cases when earnings fluctuate above and below the earnings threshold. This is a welcome improvement from the launch of CSP.

Stakeholders highlighted to SCoSS the importance to carers of clear, specific information so they understand their options.

There must be *“effective information ensuring that unpaid carers are informed about all options for reducing their earnings below the threshold, including adding additional amounts to their occupational/personal pensions where possible”*.⁶²

Recommendation 11: The Scottish Government should work with carers to develop clear, easy to follow information so that carers can understand whether their earnings are below or above the earnings threshold. Information should be in a range of accessible formats and available from services and in locations where unpaid carers attend. This should include specific reference to how earnings are calculated.

The majority of carers on CSP will also be on Universal Credit. They need to know how their UC is affected when a CSP award is set to £0 (the DWP should stop deducting its value from the UC award but continue paying the carer element). Although carers are responsible for notifying the DWP of relevant changes in CSP that effect UC entitlement, it is very important to avoid overpayments and underpayments of UC that Social Security Scotland shares data with the DWP so that relevant changes are reported automatically.

Recommendation 12: The Scottish Government sets out the systems it plans to have in place to share data with the Department for Work and Pensions to ensure relevant changes in Carer Support Payment awards are quickly and accurately reflected in Universal Credit awards.

⁶² National Carer Organisations response to SCoSS call for evidence, May 2023

Although individuals can ask for a redetermination and appeal if CSP entitlement ends or changes to a nil rate, currently there is no right to appeal against the separate decision about whether or not the person is liable to repay the overpayment. The Scottish Government has consulted on proposals to introduce this right of appeal. All respondents agreed that they should do so.⁶³ SCoSS also agrees that people should have these appeal rights which is in accordance with principle (b) that “social security is itself a human right and essential to the realisation of other human rights”. The right to social security⁶⁴ also includes an implied right to due process where benefits are withdrawn or reduced, which could include this kind of reduction.

Recommendation 13: Appeal rights should be introduced against the recovery of overpayments.

The DWP writes off overpayments below £65.⁶⁵ There will be a level below which it is not cost effective to pursue overpayments. Given that overpayments are usually the result of misunderstanding the rules and accidentally accruing overpayments,⁶⁶ writing off small sums would seem a defensible policy in the public interest.⁶⁷

Recommendation 14: The Scottish Government should consider writing off small sums of overpaid Carer Support Payment.

Some carers consider that self-employment offers them more flexibility to combine work and caring than working for an employer.⁶⁸ Around 6% of unpaid carers have income from self-employment.⁶⁹

⁶³ Pg 4 [Enhanced administration and compensation recovery: consultation analysis \(www.gov.scot\)](http://www.gov.scot)

⁶⁴ Article 9 of the International Covenant on Economic, Social and Cultural Rights

⁶⁵ [House of Commons Work and Pensions Committee \(2019\) Overpayments of Carer's Allowance \(publications.parliament.uk\)](http://publications.parliament.uk)

⁶⁶ [National Audit Office \(2019\) Investigation into overpayments of Carer's Allowance \(nao.org.uk\)](http://nao.org.uk)

⁶⁷ Overpayments which organisations decide not to pursue are subject to the guidance in [the Scottish Public Finance Manual, Losses and Special Payments \(www.gov.scot\)](http://www.gov.scot); Any decision not to pursue recovery, or not to pursue recovery in full, should be defensible and in the public interest, [the Scottish Public Finance Manual, Overpayments \(www.gov.scot\)](http://www.gov.scot)

⁶⁸ Feedback from participants at SCoSS roundtable, May 2023

⁶⁹ [Family Resource Survey, Care table 5.5 \(www.gov.uk\)](http://www.gov.uk) not broken down by whether carer received Carer's Allowance

have confirmed to SCoSS that there are no plans to change how Carer's Allowance Supplement is paid until after case transfer is complete.

The Scottish Government had initially intended to legislate for the supplement to be added to CSP through a set of amendment regulations under section 81(8) of the Social Security (Scotland) Act 2018 on the same timescales as the main CSP. This power is not subject to SCoSS scrutiny. However, at the time of writing, the Scottish Government are now considering the option of including these amendments in a schedule to the principal CSP regulations instead.

While SCoSS has not had the opportunity to scrutinise these proposed amendments, we do agree with the decision not to change Carer's Allowance Supplement until after the transfer of CA cases to CSP is complete. A switch from paying a supplement twice a year to paying it alongside CSP every four weeks is not simply a change in how it is paid, it also requires a change to who qualifies for the supplement. To get the supplement now, a carer must be getting CA on a particular day – the 'qualifying date'.

For example, a carer who was getting CA on 10 April 2023, would receive the lump sum supplement in June, while a carer whose CA ended on 9 April would get no supplement. In future, paying the supplement alongside CSP would presumably mean that when CSP starts or stops so does the supplement. We do not know whether it would have been feasible to design and implement the change sooner. However, there would have been winners and losers from the change, and no obvious way to avoid a two-tier system while case transfer was still underway. Moreover, redesigning the supplement does need careful consideration of the implications for carers particularly in relation to how the payment interacts with other UK and Scottish benefits and entitlements. Payment options could also have implications for the administration costs of delivery.

6. Older carers

6.1 Older carers with underlying entitlement

A feature of CA which impacts on older carers is the ‘overlapping benefits’ rule. Non-means tested benefits paid for being out of work for various reasons, e.g. caring, old age, pregnancy or ill health are “earnings-replacement benefits”. Someone who qualifies for two of these benefits, for example, a carer who is over pension age, can only be paid one of them. Because of this overlapping benefits rule, a carer who gets a state pension cannot be paid CA. However, they can claim CA and establish an ‘underlying entitlement’ to it. The same applies in CSP (draft regulation 16) where receipt of an overlapping benefit results in a £0 award of CSP. Around a third of people who claim CA are affected by this rule – they claim CA and are entitled to it but are not paid. That is 42,440 carers in Scotland who have an ‘underlying entitlement’ to CA, the great majority of whom are over state pension age.

There are a number of consequences of the overlapping benefits rule for older carers.

- Carers reaching pension age are not prepared for the loss of their benefit.

“There was no communication about Carer’s Allowance stopping at pension age. I lost three months support as a result. It needs to be done in a better way. Lots of people won’t know.”⁷¹

- Keeping an underlying entitlement to CA (or to CSP) means carers can get a carer addition in Pension Credit. Because of this, it is worth claiming CA (or CSP). But this is not well understood, and carers can miss out on claiming other benefits.

⁷¹ Participant at SCoSS roundtable, May 2023

“No one tells you about your entitlement to Pension Credit. There are vulnerable people due so much more support but they don’t know. I found out through word of mouth from other carers.”⁷²

- The policy rationale of avoiding double payments of earnings replacement benefits is unclear to carers.⁷³ Carers can feel penalised by having benefit taken away at pension age. Some feel that the care they give is no longer recognised.

Carers who spoke to SCoSS at a consultation event said they felt that keeping the overlapping benefits rule in CSP was a missed opportunity for more progressive change.

“It doesn’t give me much hope for the future. I’m a long term carer. What will things be like for me at pensionable age? Why should I be penalised?”⁷⁴

This disappointment was shared by some participants in the Experience Panel considering carers assistance.⁷⁵

Although the rules in CA and CSP are very similar, CSP has wider aims which go beyond income replacement, in particular, CSP also aims to recognise carers’ vital role and aims to maximise carers’ take up of all support available to them. These wider aims weaken the rationale for not paying CSP to carers who get state pension or to others whose CSP is overlapped. In response, the Scottish Government has consulted on a proposal to invest in a new payment to recognise the impact of caring on older carers and others who care for long periods of time. This is under consideration for the longer-term future of CSP.

A ‘recognition payment’ of some kind would better align with the aims of CSP. However, while these plans remain on the drawing board, there are other things that

⁷² Participant at SCoSS roundtable, May 2023

⁷³ Feedback from participants at SCoSS roundtable, May 2023

⁷⁴ Participant at SCoSS roundtable, May 2023

⁷⁵ [Social Security Experience Panels - Scottish Carer's Assistance: main report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/plain-language/social-security-experience-panels-scottish-carer-assistance-main-report)

the Scottish Government can do to make the experience better for carers at pension age. For example:

- Giving carers of working age information about their entitlement to National Insurance credits towards a full state pension, including information for carers who do not meet the qualifying criteria for CSP
- Giving carers in paid work information about paying into a private or occupational pension
- Sending a tailored communication to carers before they reach pension age to prepare them for CSP payments stopping
- Writing to carers whose CSP payments stop explaining about other support they could claim including UK benefits such as Pension Credit
- Designing a simpler process for those needing to claim CSP over pension age only to establish an underlying entitlement
- Tailoring take up campaigns aimed at older carers.

This would go some way towards putting respect for the dignity of older carers at the heart of the system (social security principle 1(e)).

Recommendation 15: The Scottish Government should take steps from the launch of Carer Support Payment to deliver information, communication and processes tailored towards the needs of older carers to significantly improve their experience of the carers' benefit system.

Keeping a rule on overlapping benefits and underlying entitlement is necessary for now, for safe and secure transfer from CA to CSP and also while an underlying entitlement remains necessary to access a carer addition in Pension Credit or other support. However, it is inherently confusing for individuals and not administratively efficient to require applications from individuals who cannot be paid. There are other ways to recognise the value of unpaid caring such as the Scottish Government's proposal for a recognition payment. We would encourage the Scottish Government

as they consider the future of CSP to work with the DWP on removing the need for underlying entitlement without losing access to a carer addition or other support.

Observation 2: It is inherently confusing for carers and inefficient for the system to require applications from individuals who have an underlying entitlement and cannot be paid. We encourage the Scottish Government as they consider the future of CSP to work with the DWP on finding a better solution.

6.2 Case transfer for older carers

Carers with an underlying entitlement to CA will be transferred to CSP at a £0 rate. This transfer is necessary but could be baffling for those affected. From a carer's perspective, they have no award to transfer and may have had little recent contact with the DWP. The Scottish Government is aware of the need to communicate carefully to this group and has tested specific letters directly with carers. This is an opportunity to encourage older carers to take up other support they may be missing out on such as Pension Credit. But a letter alone will not be enough for everyone. Help to navigate systems is important for everyone and certainly for older carers. Some older carers may need face to face support.

"I can't use a computer so it makes the biggest difference having someone help you through the system to help fill forms in."⁷⁶

The case transfer letters will signpost all carers to further advice and support. This should include information on where to get face to face help, including from Social Security Scotland's own Local Delivery service.

Recommendation 16: Case transfer letters should link older carers with Social Security Scotland's Local Delivery service and other face to face services.

⁷⁶ Participant at SCoSS roundtable, May 2023

7. Future changes

The rules and structure of CA are much the same now as they were in 1976 when it was first introduced. There are many ways in which the rules are seen as out of step with the needs of carers today. For example:

- that removing payment from carers at pension age leaves people without recognition of their caring role
- that the low earnings threshold is too restrictive and the rules too complex for carers who want to do some paid work
- that it lacks the flexibility to recognise different caring roles such as caring for more than one person
- that the low rate of benefit undervalues the work of unpaid carers
“How can Carer’s Allowance be considered income replacement – it’s certainly not a living wage.”⁷⁷

With CSP, there is an opportunity to update rules and address some longstanding concerns. Given that a review of CA is overdue, it is welcome that the Scottish Government has already developed and analysed options⁷⁸ and consulted with carers and stakeholders.⁷⁹ This work informed changes made from the launch of CSP such as the widening of access to full-time students. It also resulted in a commitment to introduce more changes after case transfer is complete which address some long-standing concerns:

- introducing a new £10 a week Carer’s Additional Person Payment for carers who get CSP and care for more than one person
- paying CSP for twelve weeks after the death of the person being cared for instead of the current eight weeks

⁷⁷ Participant at SCoSS roundtable, May 2023

⁷⁸ [Multi Criteria Analysis – More information on the process used to develop options for future changes to Scottish Carer’s Assistance eligibility \(www.gov.uk\)](https://www.gov.uk)

⁷⁹ [Scottish Carer’s Assistance: consultation \(www.gov.scot\)](https://www.gov.scot)

- paying Short-term Assistance for carers while a challenge to a CSP decision is underway, and providing support to carers when the person they care for is getting Short-term Assistance while challenging their disability assistance decision

Other proposals remain under active consideration:

- increasing the earnings threshold and introducing a 'run on' of support when earnings go over the threshold
- extending CSP to carers spending who care for two different people for a combined total of at least 35 hours per week
- continuing to pay CSP for longer when a person being cared for goes into hospital or residential accommodation
- in the longer term, considering investing in a new payment to recognise the impacts on carers' finances of a long-term caring role including older carers who currently would have only an underlying entitlement to CSP

There is an opportunity to align CSP better with human rights principles that are particularly relevant to social security support for carers, outlined in section 1.2 of this report. As proposals are further considered and developed, they could usefully be weighed according to the contribution they are likely to make to promoting, respecting and protecting carers' rights. It should also be borne in mind that the aims of CSP are wider than those for CA, for example, that CSP is also made in recognition of carers' unpaid role and its impact on their lives. The Scottish Government is likely to fall short of achieving these aims without going further than it has at the launch of CSP towards changing the structure or eligibility rules.

We accept that with a complex benefit like CSP that interacts with UK and other Scottish benefits and systems, it will take time to get proposed changes right, and that plans all come with a cost to the Scottish budget. However, some changes can be made more quickly to begin to contribute towards the wider aims of CSP and towards respecting carers' rights. For example:

- social security barriers to the right to take up paid employment⁸⁰ could be reduced by equipping carers thinking about leaving or starting a job with detailed information and advice on the effect on their overall income from earnings, CSP and Universal Credit
- delivering CSP to carers in a way that is joined up with wider services and other financial support so that carers are both better supported and feel that the impact on their lives of their unpaid carer role is recognised.

We have recommended in section 2 that the Scottish Government works with carers and stakeholders to understand how wider carer support and services could be better joined up with social security and what would provide recognition of the vital care role provided by carers.

Finally, there are also known issues with CA regarding the number of overpayments to carers in work and the impact on carers of repaying sums of money. To some extent this is an inevitable consequence of CA entitlement being dependent on earnings. However, there are ways that CSP rules could be redesigned and ways it could be delivered that could reduce the risk of overpayments. We have set out our views and recommendations in section 4 of this report on how this inherent risk might be mitigated. In view of the impact on carers, we consider that redesigning the earnings rules and threshold should be a priority for the Scottish Government plans the future of CSP.

Recommendation 17: Redesigning the earnings rules and threshold should be a priority for the Scottish Government's plans for the future of Carer Support Payment.

⁸⁰ Article 6 of the International Covenant on Economic, Social and Cultural Rights

8. Regulations: areas for clarification

8.1 Meaning of terms

“Couple” and “partner”. “Couple” is defined as a married or an unmarried couple, and “partner” is someone in a married or unmarried couple (draft regulation 2). We note two changes to these definitions that we believe are needed.

1. They should include couples who are civil partners.
2. They should be restricted to couples who live together or share a household.

Section 39 of the Welfare Reform Act 2012 uses the definition, which was subsequently also used in the Social Security (Scotland) Act 2018.

“two people who are married to, or civil partners of, each other and are members of the same household; or two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partner.”⁸¹

The definitions relate to the rule in draft regulation 17 (abatement in respect of a relevant benefit) which is intended to avoid duplicating payments when arrears of CSP are due and an individual or their partner has received a UK means-tested benefit such as Income Support for the period covered by the arrears. In this situation, couples must be living together or sharing a household to claim benefit as a couple. If they do not cohabit, they are not a ‘couple’ and CSP for one partner is not be deducted as income from the means-tested benefit of the other partner and there would be no duplication of payment when arrears are due.

Recommendation 18: The definitions of “couple” and “partner” in draft regulation 2 should be amended to reflect the definition used in the Welfare Reform Act 2012 and the Social Security (Scotland) Act 2018.

“Qualifying disability benefit”. The definition in draft regulation 2 includes reference to “the middle or highest care rate” of Child Disability Payment and

⁸¹ Section 39, [Welfare Reform Act 2012 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Disability Living Allowance. The 'care rate' is not a strictly accurate legal term. It should refer to a 'care component'.⁸²

Recommendation 19: The Scottish Government should amend references to the “care rate” of Child Disability Payment and Disability Living Allowance to refer to “the care component” of these benefits at the middle or highest rate.

A number of social security benefits are referred to in the draft regulations as qualifying disability benefits (draft regulation 2) or overlapping with CSP (draft regulation 16). Most of these are defined, however, there are some that are not e.g. Attendance Allowance, Constant Attendance Allowance, Armed Forces Independence Payment, Retirement Pension, Young Carer Grant. The inclusion of a definition would be desirable for clarity.

Recommendation 20: The Scottish Government should ensure that the draft regulations include all required definitions of qualifying benefits and overlapping benefits.

8.2 Choice of Young Carer Grant or Carer Support Payment

To get Young Carer Grant (YCG), young carers need to be caring for an average of 16 hours a week, and this care can be for more than one person. In general, it is aimed at young carers with less intensive caring roles who would not be eligible for CSP which requires care for over 35 hours a week for one cared for person.

However, leaving full-time education or a changing caring role can mean that a young carer who got YCG may become eligible for CSP or the other way round, or they may not realise they are eligible for CSP until they have already received a YCG. The rules are intended to accommodate these situations.

⁸² For example, as in regulation 11 of [The Disability Assistance for Children and Young People \(Scotland\) Regulations 2021 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

The policy intention⁸³ is that:

- 1) They could get CSP after having had a YCG – this includes applications for CSP made in the same year as the grant.
- 2) They could get YCG after an award of CSP has ended, as long as they were not getting CSP during the 13-week qualifying period for YCG.
- 3) They would not be able to get YCG if they are receiving CSP – this includes when the YCG application is in respect of care provided to a different person than the cared for person named on their CSP award.

This is complicated. Young carers should be able to claim everything they are entitled to. The complexity in the rules may in this case be justified, to avoid duplicating benefit. But the regulations could more clearly express the rules.

For the first scenario – applying for CSP after having had a grant – the policy intention to allow CSP applications in the same year as the grant is clearly expressed in draft regulation 12(2) when the same cared for person is involved but could be more clearly expressed in regulation 12(1) where a different cared for person is involved.

For the second scenario – applying for YCG after a CSP award has ended – the draft regulations do not seem to meet the policy intention to permit a YCG application as long as the CSP award ended before the start of the YCG 13-week qualifying period. The YCG Regulations seem to require the CSP award to have ended before “the day their [YCG] application is made” which is after the 13-week qualifying period.⁸⁴

For the third scenario – not permitting a YCG application while getting CSP – this policy intention is clarified by an amendment to the YCG regulations⁸⁵ para 9 of the

⁸³ Scottish Government response to SCoSS question (response received May 2023).

⁸⁴ Regulations 5 and 7(1), [The Carer's Assistance \(Young Carer Grants\) \(Scotland\) Regulations 2019 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

⁸⁵ [The Carer's Assistance \(Young Carer Grants\) \(Scotland\) Regulations 2019 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

Schedule to the draft regulations). We note that there may be a typo in this amendment which amends regulation 7(2) of the YCG regulations when it would appear to be regulation 7(1) that is intended.

Of course, guidance and communications to individuals, decision makers and advisers must be completely clear.

Recommendation 21: Regulations for Young Carer Grant and Carer Support Payment about moving from one of these benefits to the other should be more clearly and accurately expressed to meet the policy intention.

8.3 Definition of training

Young people aged 16 to 19 in ‘approved training’ are not eligible for CSP. The definition of approved training in draft regulation 13(5) largely mirrors the Child Benefit definition.⁸⁶ We are grateful to CPAG for pointing out that the Child Benefit definition was amended in March 2023 to remove ‘Employability Fund activity’.⁸⁷ If this activity has ended it should be removed from the CSP regulation for clarity.

Recommendation 22: If Employability Fund activity is no longer operational, regulation 13(5) should be amended to remove it from the definition of approved training.

8.4 At age 16

The earliest entitlement to CSP can start is the 16th birthday (draft regulation 4). Until recently, this was the same as the CA rule. However, the CA rule has changed from 16 to minimum school leaving age. Case law has held that the law makers who set the age limit for CA at 16 intended it to align with minimum school leaving age.⁸⁸ School leaving age changed after the law was passed. The case law decided that

⁸⁶ Regulation 1, [The Child Benefit \(General\) Regulations 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁸⁷ [The Tax Credits and Child Benefit \(Miscellaneous Amendments\) Regulations 2023 \(www.legislation.gov.uk\)](https://www.legislation.gov.uk)

⁸⁸ [Secretary of State for Work and Pensions v BC \(CA\) \[2023\] UKUT 10 \(AAC\) UA-2021-000272-CA \(www.gov.uk\)](https://www.gov.uk)

the reference in the legislation to age 16 should be treated as a reference to minimum school leaving age to give effect to what the UK Parliament intended. The result is that for CA, in law the earliest you can claim in Scotland is your school leaving date of either 31 May or the beginning of the Christmas holidays. In England it is the last Friday in June.

In practical terms, if the age limit remains at the 16th birthday, this could mean that young people who are more flexibly home educated and may sometimes not be classed as being in 'full-time education' may qualify while young people educated in school may not qualify. It would seem to be fairer, albeit more complex, to set the age limit at school leaving age, however more consideration is needed of whether there are any other situations when a young person is not in formal schooling.

Recommendation 23: The Scottish Government makes its intention explicit regarding whether the lower age limit for Carer Support Payment is intended to be the 16th birthday or the minimum school leaving age.

8.5 Abatement

CSP is taken into account as income for means-tested benefits such as Universal Credit, Pension Credit and Income Support. These benefits are reduced pound for pound by the amount of CSP paid. When a carer gets backdated CSP, which commonly happens on a first application or after an award of a qualifying disability benefit, the backdated award is taken into account as income for any means-tested benefit paid for the same period. If the arrears were to be paid in full, that would mean a duplication of payment for the same period and the individual having to repay the overpayment of benefit. There is an internal offsetting process to transfer arrears to cover any overpayment, and then paying the individual what is left. This process of offsetting arrears is called 'abatement'.

Draft regulation 17 is intended to replicate the abatement process used internally within the Department for Work and Pensions (DWP) to allow Social Security Scotland to pay arrears of CSP directly to the DWP, with the consent of the individual. It applies to Pension Credit and legacy means-tested benefits but not to

Universal Credit. However, most carers in this situation will be getting UC. When arrears of CSP result in an overpayment of UC, the DWP will recover it through deductions from the monthly UC award, rather than offsetting or abating the amount as is the case for legacy benefits.

We welcome the inclusion of an abatement process in CSP. It is a process that reduces complexity for carers. Making processes as simple as possible is a commitment to people in Our Charter.⁸⁹ However, it would be more useful if it also applied to UC.

Although the DWP does not use the abatement process in UC, it has the statutory power to do so.⁹⁰ The Scottish Government has chosen to mirror the DWP's practice rather than their statutory powers in this case. They have said that if the DWP decides in future to put in place an abatement process for UC, the Scottish Government will consider amending CSP regulations at that point.⁹¹ We accept that it is not a simple matter for the DWP to introduce this process for UC and it may not be efficient or value for money to do so for cases in Scotland alone.

We note a technical issue with draft regulation 17. The draft regulations referred to SCoSS did not calculate correctly the amount of CSP to be given to the DWP. We are pleased to note that the Scottish Government has amended the draft following exchanges between SCoSS and officials. The formula is essentially to take the weekly entitlement to the means-tested benefit before the start of the CSP award and deduct from it the lower weekly amount of the means-tested benefit entitlement when CSP is in payment (it is lower because CSP is deducted pound for pound even though there is an additional carer premium included). Then multiply the result for the number of weeks covered by the CSP arrears. As drafted, the regulation would seem to produce a correct result in most cases. Where it will produce an incorrect result is when other changes that affect the amount of means-tested benefit happen

⁸⁹ [Our Charter](#), Part 2, Expectation 1: "Make communications, processes and systems as simple and clear as possible by testing them with the people who will use them."

⁹⁰ Section 74(2), [Social Security Administration Act 1992 \(www.legislation.gov.uk\)](#)

⁹¹ Scottish Government response to SCoSS question (response received April 2023)

during the abatement period, such as a couple separating, or benefit rates being updated. Therefore, there will be cases where the calculation would result in the individual getting too little and the DWP getting too much of the arrears. In practice, Social Security Scotland will rely on the calculation provided by the DWP of the amount by which the arrears of CSP should be reduced, based on the amount of means-tested benefit overpaid in the abatement period. However, the CSP regulations should be framed so as to accurately produce the same result.

Recommendation 24: The provision in draft regulation 17 to avoid duplicating payments to carers by offsetting arrears of Carer Support Payment against means-tested benefits paid for the same period should be amended to provide an accurate amount to offset taking account of changes during the abatement period.

8.6 Backdating

The existing CA system allows for a right to backdate a claim for up to three months to a date chosen by the claimant as long as entitlement is established on that date. For CSP, the policy intention is also that the carer will select the start date on their application and Social Security Scotland will align the chosen date with the start of the award week after entitlement from that date has been checked. Draft regulation 18 in the version sent to SCoSS for scrutiny was not completely aligned with the policy intention in that the selection of the start date was wholly at the discretion of Scottish Ministers. A similar provision allows for further backdating of CSP after an award of a qualifying disability benefit (to the start date of the qualifying benefit). We are pleased that the Scottish Government has considered changing the drafting of regulations 18 and 19 to introduce express safeguards for individuals.

We would also suggest that processes allow for individuals to ask for backdating of CSP after their application has been determined. This can happen, for example, when carers have applied for benefit before getting welfare rights advice about maximising their entitlement.

Recommendation 25: The Scottish Government should include safeguards to ensure that backdating of Carer Support Payment is a right rather than being at the discretion of Scottish Ministers, with an appropriate degree of flexibility to allow for eligibility requirements being met and alignment with set award weeks.

We note two further issues with the wording of draft regulation 19 which provides for backdating of CSP after an award of a qualifying disability benefit. Officials have told SCoSS in each case that they plan to change the drafting accordingly.

- To ensure that CSP is backdated to the point at which the disability benefit entitlement begins, rather than the point at which the decision in respect of the disability benefit is made.
- To include reference to the Department for Communities in Northern Ireland. There are probably limited situations where a carer resident in Scotland would be caring for someone resident in Northern Ireland but there could be carers who visit weekly or remain ordinarily resident in Scotland while caring in Northern Ireland.

Recommendation 26: The Scottish Government ensures that regulation 19 provides that an application for Carer Support Payment, made after a decision on a qualifying benefit, is backdated to the point at which the disability benefit entitlement begins rather than when the decision on disability benefit is made. It should also provide for decisions made by the Department for Communities in Northern Ireland.

8.7 Amount and form of Carer Support Payment

We identified two technical issues with the wording of draft regulation 16 which officials have told SCoSS they plan to amend. We include them in this report for completeness.

In the provision of an 8-week run of CSP after the cared for person dies, draft regulation 16(4)(a) ends the award before 8 weeks if the carer stops meeting

eligibility conditions other than the requirement to be providing care, for example if they started work and earned over the limit in that period. In the version of the draft regulations sent to SCoSS for scrutiny, regulation 16(4)(a) refers to ‘any other eligibility requirement set out in Part 3 of these Regulations’ which does not set out clearly which requirements this refers to. Officials have told us that they plan to amend the regulations.

Recommendation 27: Draft regulation 16(4)(a) should be amended to clarify the eligibility requirements which must continue to be satisfied by a carer following the death of a cared for person.

Draft regulation 16(3)(k) refers to “Contributory Employment and Support Allowance and Training Allowance”, however these are separate benefits and the draft regulations should be amended to reflect this.

Recommendation 28: Draft regulation 16(3)(k) should be amended to separate Training Allowance and Contributory Employment and Support Allowance.

8.8 Multiple applications involving the same cared for person

Two people cannot receive CSP where they are both caring for the same person. Nor can a carer get CSP if someone else is already getting CA or the carer element of Universal Credit for the same cared for person (draft regulation 5). Draft regulation 24 applies to work out who should be entitled when more than one person tries to claim. In CA, these are referred to as “rival carer” situations. This situation may arise in difficult family situations such as when couples separate and share care for a disabled child or simply due to a misunderstanding of the rules. The intention is that the same exclusion will apply across Scottish and UK carer benefits so that only one carer will be able to get CSP or CA or the UC carer element for the same cared for person. Amendments to UK social security legislation will be needed to bring this about.

The overall policy aim, where two carers are eligible for support, is to ensure that carers are supported to come to a decision themselves on which of them should

receive benefits and are equipped with access to information on income maximisation to help them to do so. This seems the right approach and is consistent with the principle of respecting the dignity of the individual carers involved. Where multiple carers both seeking CSP cannot agree, draft regulation 24 passes the decision to Social Security Scotland.

Draft regulation 24 is made under powers in the Social Security (Scotland) Act 2018 which relate to multiple carers' eligibility for CSP – not multiple carers involving CA or UC carer element which in any case Scottish Ministers would have no jurisdiction over.⁹² As drafted, reg 24(2) refers to multiple carers for all three benefits. The drafting could be clearer on the scope of this provision.

The Act says that regulations may make an individual's eligibility depend on being “selected through a process set out in the regulations in a case where more than one individual would otherwise be eligible”. The process set out in regulation 24 is ‘first come, first served’ if two applications are received and neither has yet been awarded. If CSP is already in payment to one carer, regulation 24 allows a check on their eligibility with the potential to remove the award if they no longer meet the criteria. However, if both carers meet the criteria, regulations do not clearly permit an existing award to be removed without the agreement of the recipient. This policy intention would need to be set out explicitly in regulations and should include a right of appeal for the individual. In these cases, discretionary factors are likely to be relevant to decide who is the main carer. The views of the cared for person should be taken into account where possible. The choice of carer could impact on a disabled person’s right to live independently.⁹³

The Scottish Government has said that they are discussing with the DWP the potential for cross-border “rival carer” situations and the need for consistency between Social Security Scotland’s approach and the DWP’s. However, a more

⁹² Para 4, Schedule 2, [Social Security \(Scotland\) Act 2018 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

⁹³ Article 19 of the United Nations Convention on the Rights of Persons with Disability <https://social.desa.un.org/issues/disability/crpd/article-19-living-independently-and-being-included-in-the-community>

common situation will be carers who both live in Scotland, one of whom gets Universal Credit carer element or has yet to be transferred from CA. In other words, not cross-border, but cross-jurisdiction cases between Social Security Scotland and the DWP. A challenging degree of systems and processes will be needed to adjudicate fairly and clearly between claims in these situations.

Recommendation 29: In deciding between claims to Carer Support Payment from “rival carers”, the views of the disabled person whose care is involved should be sought where possible.

Recommendation 30: The Scottish Government should work with the DWP to develop systems to adjudicate fairly and effectively between “rival carer “claims and entitlements to Carer Support Payment, Carer’s Allowance and Universal Credit carer element.

Recommendation 31: Regulations should make clear the scope of the multiple applications rule, the provisions for removing entitlement and the right of appeal.

9. Approach to scrutiny

The Minister for Social Security and Local Government referred draft regulations to SCoSS⁹⁴ and a policy note⁹⁵ on 3 March 2023. This contained several areas of the regulations which were provisional, most notably on earnings and education. We were given a deadline for reporting of 26 May 2023.

Following SCoSS’s April 2023 Board meeting, the Board decided to report by 8 June 2023 given that significant parts of the draft regulations were still provisional. This would allow SCoSS further time to undertake detailed stakeholder engagement

⁹⁴ [Draft Carer’s Assistance \(Carer Support Payment\) \(Scotland\) Regulations 2023 \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

⁹⁵ [Draft Carer’s Assistance \(Carer Support Payment\) \(Scotland\) Regulations 2023: Policy Note \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

when more detail was available. The Scottish Government was notified of the Board intention on 31 March 2023.

Updates to the draft regulations were received as follows:

- On 31 March, a policy update⁹⁶ and a revised version of draft regulations⁹⁷ with finalised rules on the past presence test, changes to abatement rules, removal of advance applications and provisional regulations on education.
- On 9 May 2023, a further revised version of the regulations with the earnings rules and some minor changes.
- On 23 May 2023, a further revised version of the draft regulations with rules extending eligibility to a cohort of young people in non-advanced education in particular situations less likely to be dependent on parental support.
- On 2 June 2023, a further version of the draft regulations with minor amendments made in the light of questions from SCoSS through the scrutiny process.

The provisional nature of both the initial set of draft regulations and the updated versions of draft regulations we received had direct implications for our approach to scrutiny. We delayed our written call for evidence until later in the scrutiny process once further information had been received and extended the publication date of our report as a result. On receipt of the earnings rules, we engaged with welfare rights advisers for their view on these provisions at short notice.

We received the final version of the education rules after our stakeholder engagement was complete and, therefore, we were not able to engage directly with stakeholders on the extension of eligibility to the additional cohort of 16 to 19-year-olds in non-advanced education.

⁹⁶ [Draft Carer's Assistance \(Carer Support Payment\) \(Scotland\) Regulations 2023: update from Scottish Government \(socialsecuritycommission.scot\)](#)

⁹⁷ [Draft Carer's Assistance \(Carer Support Payment\) \(Scotland\) Regulations 2023: updated regulations received 31 March 2023 \(socialsecuritycommission.scot\)](#)

Drafts of the Equality Impact Assessment, the Child Rights and Wellbeing Impact Assessment, the Fairer Scotland Duty Assessment, the Island Communities Impact Assessment and the Business and Regulatory Impact Assessment were received from the Scottish Government on 6 April 2023. In our stakeholder engagement, we were advised that communications is a key equality issue⁹⁸ hence we also welcome reference to communications and signposting in the impact assessments and look forward to seeing further detail on the Government's communications strategy for CSP in due course.

We welcome the data gathered and considered in these impact assessments, and the acknowledgement that in some instances there is little direct data about CA recipients. The Equality Impact Assessment highlights where data on some protected characteristics are partial (e.g. pregnancy/maternity, marriage and civil partnership, religion and belief, sexual orientation, gender reassignment). This assessment refers to plans to gather data to fill these gaps, such as through new CSP applicants and engagement with carers' organisations to understand carers' experiences. While information from other research and data about carers is referenced, SCoSS notes that, in the interim, assumptions that the impacts of CSP on people with protected characteristics are either broadly positive, or are not considered negative, could be seen as provisional. Revised assessments may need to apply such data to assess whether the regulations meet the needs, and minimise any disadvantage, of people with one or more protected characteristic.⁹⁹

Observation 3: SCoSS welcomes being sent a full set of draft impact assessments relating to the draft regulations. In the light of limited data on some groups with protected characteristics, SCoSS also welcomes plans to tackle data gaps.

⁹⁸ Academic comment at SCoSS roundtable, 30 March 2023

⁹⁹ [Essential Guide to the Public Sector Equality Duty: A Guide for Public Authorities \(Scotland\) \(www.equalityhumanrights.com\)](http://www.equalityhumanrights.com)

To understand, and represent, the views of stakeholders in relation to the draft regulations, SCoSS also held two events with external stakeholders during the scrutiny period.

SCoSS would like to express its thanks to VOCAL and the National Carer Organisations for their work in supporting us to engage directly with carers during the scrutiny period. We would also like to thank all the organisations and individuals who responded to our call for evidence and the academics who joined our roundtable discussion on the draft regulations. The insights gained from each of these groups were invaluable and have informed this report.

We are grateful for the efforts made by officials to keep us apprised of developments throughout the scrutiny process and for their timely response to written questions.

Annexe A: External stakeholders

A1. Written call for evidence respondents

- Health and Social Care Alliance Scotland (the ALLIANCE)
- Child Poverty Action Group in Scotland
- ENABLE Scotland
- Marie Curie
- National Carer Organisations (The National Carer Organisations are Carers Trust Scotland, Carers Scotland, the Coalition of Carers in Scotland, MECOPP, Shared Care Scotland, and the Scottish Young Carers Services Alliance)
- One Parent Families Scotland
- Experts by Experience Panel of the Poverty and Inequality Commission
- Individuals in rural and island areas with support from the Coalition of Carers in Scotland.

A2. External events held during the scrutiny period

- Roundtable with academics held on 31 March 2023
- SCoSS carers roundtable with hosted by VOCAL held on 4 May 2023.

Annexe B: Scrutiny timeline

5 September 2022	Secretariat meeting with Scottish Government officials to discuss the scrutiny checklist.
21 December 2022	SCoSS pre-scrutiny evidence session from DWP and the Scottish Government.
6 February 2023	Scottish Government briefing session on CSP.
2/3 March 2023	Draft Regulations formally referred to SCoSS by the Minister for Social Security and Local Government.
8 March 2023	Ad hoc Board meeting on the draft regulations.
30 March 2023	SCoSS meeting with academic partners.
30 March 2023	SCoSS Board attended by Social Security officials in CSP discussion.
31 March 2023	Updated draft regulations received from the Scottish Government.
4 April 2023	External stakeholders written call for evidence began.
4 May 2023	Stakeholder engagement event held with VOCAL.
9 May 2023	Updated draft regulations received from the Scottish Government.
17 May 2023	External stakeholders written call for evidence closed.
23 May 2023	Updated Regulation 13 on education rules received from the Scottish Government.
31 May 2023	SCoSS board meeting to discuss report.
6 June 2023	Ad hoc board meeting to discuss final report.
8 June 2023	SCoSS report signed off and laid.

Annexe C: About the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect.

We provide independent scrutiny of the Scottish social security system and our full functions are set out in section 22 of the Social Security (Scotland) Act 2018.¹⁰⁰

We provide detailed analysis of proposed social security regulations which are referred to us by Ministers, making recommendations for improvement where necessary.

Our role is also to scrutinise the Scottish Government's delivery of the commitments set out in the Social Security Charter.¹⁰¹

We are separate from the Scottish Government, and we carry out our work independently of both Scottish Ministers and the Scottish Parliament.

The Scottish social security principles

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,

¹⁰⁰ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹⁰¹ [Social Security Scotland - Our Charter](#)

- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.