



Response to a Scottish Government consultation on Scottish Carer's Assistance

May 2022

Ed Pybus

The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

This is our response to a Scottish Government consultation on Scottish Carer's Assistance¹.

- Question 1: Please give us your views on how Scottish Carer's Assistance services could be designed to suit carers' needs (For example, in terms of how carers can apply for benefits, report changes that may affect their benefits, get payments, or get information or notifications about their benefits).

There need to be multiple ways to apply, including face to face applications, on-line applications and by telephone. We are aware that there is provision for formal appointees and advocacy services to assist claimants. There must also be provision to ensure welfare rights workers, and other advisers, are able to assist with applications.

There must be sufficient funding for welfare rights services to allow them to provide advice to claimants. Applying for carers benefits can have an impact on the disabled person's benefit entitlement, and well as the carer's benefit entitlement. Social Security Scotland must have referral pathways in place to ensure everyone who applies for Scottish Carer's Assistance, who needs advice, can get the advice they need.

Claims for Scottish carers assistance must be assessed in a timely manner. We are aware from our Early Warning System evidence that carers can wait for many weeks for decisions about carers allowance entitlement. For example;

¹ <https://www.gov.scot/publications/scottish-carers-assistance-consultation/>

An adviser reports that claims for carer's allowance are taking 9-12 weeks to process, when it used to only take 3. #989 24/5/22

- Question 2: Please give us your views on support that Scottish Carer's Assistance could link to that would be helpful for carers.

Carers and organisations working directly with carers will be better placed to answer this question.

- Question 3: Do you agree or disagree with the proposed residency criteria for Scottish Carer's Assistance? [Agree, Disagree, Unsure.]

Agree

- Question 4: Please write the reason why you agree or disagree with the proposed residency criteria for Scottish Carer's Assistance, or any other information you want to share on this question.

The consultation paper states that, to get support, carers must not be subject to immigration control. While this is broadly the case for Carers allowance, there are some groups who are subject to immigration control who are not excluded from claiming benefits – for example some nationals from Algeria, Morocco, San Marino, Tunisia and Turkey and those whose leave to remain is a result of a 'maintenance undertaking'. This should be replicated for carer's assistance.

The Scottish Government should ensure there are agreements with the DWP and the Northern Ireland Department for Communities to ensure that a claim for carers allowance/assistance made to any national social security agency is treated as being made to the appropriate one. This will ensure that no individual 'falls through the cracks' and individuals are not disadvantaged by making a claim to the wrong agency. This is a potential risk as the social security systems across the UK become more complex, particularly in cases where it is not immediately clear where an individual is ordinarily resident.

- Question 5: Please give us your views on the 'past presence test' which should be used for Scottish Carer's Assistance.

Carers Scotland estimated that unpaid carers were saving the Scottish Government £43million per day during the COVID pandemic in 2020.² Their contribution must be recognised in relation to when care is provided – not after an arbitrary waiting period.

Therefore the past presence test should be scrapped for carers benefits. There is no need for social security Scotland to match the DWPs approach and if they did, it could be subject to legal challenges³ and future changes.

Evidence from CPAG's Early Warning System highlights that the primary group affected by the past presence test for carers allowance are returning UK nationals who have come back specifically to provide care. For example:

² <https://www.carersuk.org/scotland/news/unpaid-carers-save-scottish-government-43-million-every-day-of-the-pandemic#:~:text=With%20every%20day%20of%20the,by%20charity%20Carers%20Scotland%20shows.>

³ The legality of the 2 year past presence test for child disability benefit was challenged by CPAG <https://cpag.org.uk/welfare-rights/legal-test-cases/disability-living-allowance-2-year-past-presence-test>. It is not yet clear the impact of this on entitlement to carers allowance, and there could be further challenges on the legality of the past presence test.

A British citizen was living abroad but has returned to the UK, with her daughter, to care for her elderly parents. Under the current rules she will not be able to claim carers allowance until she has been back in the UK for two years and is unsure how she can manage until then.

We are aware that this change could impact the number of people eligible for additional support from the DWP, but the impact of this would be minimal compared to other changes being made to the social security system. From anecdotal evidence we don't believe scrapping the past presence test would increase eligibility by a large amount, but will have a significant positive impact on carers that are currently affected.

We would welcome further analysis on the impact removing the past presence test would have on the number of claimants who would be eligible for carers assistance.

- Question 6: Do you agree or disagree with the proposed re-determination timescales for Scottish Carer's Assistance? [Agree, Disagree, Unsure.]

Disagree

- Question 7: Please write the reason why you agree or disagree with the proposed re-determination timescales for Scottish Carer's Assistance, or any other information you want to share on this question.

Due to successful legal challenges to the DWP's revision and appeals process, for carer's allowance, claimants have, in practice, 13 months after the date of a decision to start the appeal process. For Scottish carer's assistance this will be reduce to 42 days, with an extension to up to 12 months only if good reason can be shown for the delay.

There is no reason that the Scottish system needed to replicate the two-stage approach to challenging a decision that was brought in by the DWP as part of the insert date UK government welfare reforms. This change has rightly been criticized as a barrier to justice and it is disappointing that a similar system has been introduced into the Scottish system. However, as such a system has been introduced, it is vital that data is collected and analysed to see if this two stage approach is working effectively , or if it is, indeed, acting as a barrier to justice for claimants wishing to challenge decisions.

Whilst we welcome the commitment to ensure re-determinations are dealt with in a timely manner, there is a danger that if the agency's deadline for completing a re-determination is missed, claimants could find themselves having to appeal to the Tribunal, even if Social Security Scotland is able to later make a decision that is in the claimant's favour. This is because the tribunal rules for Scottish benefits, unlike those for UK wide benefits, do not allow an appeal to 'lapse' if the agency make a favourable decision after the appeal has been lodged. We would urge the Scottish government to amend the tribunal rules to resolve this issue.

- Question 8: Do you agree or disagree with the proposals on when payments of Scottish Carer's Assistance should be suspended? [Agree, Disagree, Unsure.]

Unsure

- Question 9: Please write the reason why you agree or disagree with the proposals on when payments of Scottish Carer's Assistance should be suspended, or any other information you want to share on this question.

We disagree that Scottish carer's assistance should be suspended to 'prompt' a claimant to provide information. Instead, support should be in place to support claimants to provide the information that the agency requires.

Whilst we accept there may be a few occasions where a suspension may be required, before we could support such an approach we would welcome details of how the regulations relating to suspensions will be framed. For example, requests for what kind of information should be covered by the power to suspend payment, and how long will a claimant have to respond before SSS consider a suspension.

We would welcome further detail about what having regard for an individual's financial circumstances will mean in practice, either through further regulations or guidance.

- Question 10: Please give us your views on what should happen to payments of Scottish Carer's Assistance when a cared for person's qualifying benefit is suspended.

Evidence gathered by the Early Warning System highlights benefits being suspended or stopped causes income shocks that cause households financial hardship. Suspension of benefit can leave claimants in 'limbo' for an unspecified period of time.

It is vital that sudden losses of income are avoided so we would recommend at least a run-on of carers assistance in the event that the cared for person's qualifying benefit is suspended. This would allow financial security while the reason for the suspension of the disability benefit is addressed.

- Question 11: Do you agree or disagree with the proposals for when an award of Scottish Carer's Assistance should be set to £0? [Agree, Disagree, Unsure.]

Unsure

- Question 12: Please write the reason why you agree or disagree with the proposals for when an award of Scottish Carer's Assistance should be set to £0, or any other information you want to share on this question.

It is not clear if the proposal is that all individuals entitled to a £0 award of Scottish carers assistance would be entitled to passported assistance.

At present those entitled to carers allowance, but unable to receive it due to overlapping benefit rules, can get additional support, such as premium in pension credits, housing benefit, income support, income-based job seeker's allowance and income-related employment and support allowance, a Christmas bonus and exemption from the benefit cap. However, if someone's carer allowance stops due to the cared for person's disability benefits stopping due to being in a care home or hospital, or because their income was too high, they are not entitled to these additional supports.

If carers who have an underlying entitlement, and those whom for example, are caring for someone who has been in hospital for more than 28 days, are both paid Scottish carer's assistance at £0 it may cause confusion as to which individuals are entitled to the passported assistance. However, if any £0 award of Scottish carers' assistance is sufficient to passport to additional support it is not clear why this would end after 6 months for some claimants.

- Question 13: Do you agree or disagree with the proposal to pay Scottish Carer's Assistance to carers when the person they are caring for is receiving short-term assistance? [Agree, Disagree, Unsure.]

Unsure

- Question 14: Please write the reason why you agree or disagree with the proposals to pay Scottish Carer's Assistance to carers when the person they are caring for is receiving short-term assistance, or any other information you want to share on this question.

We recognise that individuals need continued support, both when challenging decision, and when entitlement to carers or disability assistance ends.. Data should be collected to analyse the impact of this policy. An alternative approach is to allow a run-on period of disability and carers' assistance, once entitlement has ended, in all cases. This would both support those who are challenging decisions, and provide support for all individuals who see a drop in income when their entitlements end, allowing them to adjust to a lower income.

Widening entitlement to carers allowance may create issues for passporting to other supports (see Q12) and for evidencing an individual's work-related requirements for UC and other reserved benefits. At present someone who satisfies the qualifying criteria for carer's allowance automatically has no work-related requirements for UC. If the eligibility criteria for Scottish carers' assistance are wider than for carers' allowance will the DWP accept that entitlement to Scottish carer's assistance is sufficient evidence of no work-related requirements for UC?

- Question 15: Please give us any other views you want to share on the proposals for Scottish Carer's Assistance when it is first launched.
- Question 16: Do you agree or disagree that Carer's Allowance Supplement should be paid alongside carers' regular payments of Scottish Carer's Assistance in future? [Agree, Disagree, Unsure.]

Unsure

- Question 17: Please write the reason why you agree or disagree that Carer's Allowance Supplement should be paid alongside carers' regular payments of Scottish Carer's Assistance in future, or any other information you want to share on this question.

Carers and organisations working directly with carers will be better placed to answer this question.

- Question 18: Please give us any other views you want to share on the proposals for Carer's Allowance Supplement.
- Question 19: Do you agree or disagree with the proposed eligibility criteria for Carer's Additional Person Payment? [Agree, Disagree, Unsure.]

Agree

- Question 20: Please write the reason why you agree or disagree with the proposed eligibility criteria for Carer's Additional Person Payment, or any other information you want to share on this question.

If the person being cared has the severe disability premium included in a means-tested benefit (it is not included in universal credit) this will end if someone claims carer's allowance and likely Scottish carer's assistance on their behalf. It would be good to get clarity as to whether this would end if someone claims carer's additional person payment.

The loss of the premium can represent a huge loss of income for the person being cared for, so it is vital that carers and cared for people are made fully aware of potential impacts to income before a claim for Scottish carer's assistance, and potentially for carer's additional person payment, is made.

Example

Jackie cares for her son, and receives Scottish carer's assistance. She also cares for her Granddad who, because he lives alone and gets a disability benefit, has a severe disability addition as part of his pension credits worth £69.40 per week. If carer's additional person premium works the same way as carer allowance, and Jackie applies for a carer's additional person premium she will get £10 per week extra, but her Granddad will lose £69.40 per week.

- Question 21: Do you agree or disagree with the proposed payment frequency for Carer's Additional Person Payment? [Agree, Disagree, Unsure.]

Unsure

- Question 22: Please write the reason why you agree or disagree with the proposed payment frequency for Carer's Additional Person Payment, or any other information you want to share on this question.

Carers and organisations working directly with carers will be better placed to answer this question.

- Question 23: Do you agree or disagree with the proposal to target Carer's Additional Person Payment to carers who are getting payments of Scottish Carer's Assistance?

[Agree, Disagree, Unsure.]

Disagree

- Question 24: Please write the reason why you agree or disagree with the proposal to target Carer's Additional Person Payment to carers who are getting payments of Scottish Carer's Assistance, or any other information you want to share on this question.

Overlapping benefits

It is not clear what the policy intent is of not making a payment to those with an underlying entitlement to carers' allowance and it could lead to confusion within the system. Where there are overlapping benefits, it is usually the case that 'contributory benefits' are paid in preference to 'non-contributory benefits.' Contributory benefits are benefits that are linked to national insurance contributions, such as contribution-based jobseeker's allowance, contributory employment and support allowance and retirement pensions. These benefits all still exist alongside universal credit. Non-contributory benefits are benefits that are paid because of your circumstances, rather than your contributions, like carers allowance.

If a carer was entitled to contributory employment and support allowance and carers allowance, they would be paid contributory employment and support allowance rather than carers allowance. There is a mechanism to 'top up' the contributory benefit, if the non-contributory benefit is paid at a higher rate. Carers allowance is paid at £69.70, contributory employment and support allowance could be paid at £77.00. So if an individual is receiving contributory employment and support allowance, overlapping benefits rules would mean they wouldn't get Scottish carers assistance. The carer would miss out on the carers allowance supplement, but they are no

worse off because the carers allowance supplement would lift their carers allowance to the same as their employment and support allowance, £77 per week. However, if they cared for another disabled person they would now miss out on the CAPP as well, meaning they were worse off than someone who wasn't entitled to contributory employment and support allowance. (If they give up their claim for contributory employment and support allowance, they will lose national insurance contributions, and not be able to reclaim in the future once they stop caregiving).

A solution would be to pay carer's additional person payment to carers who have an underlying entitlement to carers allowance as well. This would be in line with the policy intent, which isn't to fully mitigate the costs of caring, nor to pay them for their carers role – its role is to provide support for carers. CAPP recognises that *'having more than one caring role can have a bigger impact on carers' health and wellbeing'* – so carers on overlapping benefits equally need this support.

Interaction with universal credit

The consultation documents says:

'This means it would not be paid to people who have 'underlying entitlement' to Scottish Carer's Assistance, or who get the Universal Credit Carer Element instead.'

However, this is incorrect – claimants can get Scottish carers assistance and the universal credit carers element. The people it excludes are those who don't claim Scottish carers assistance, whilst on universal credit, because they are no better off getting carers allowance.

Social Security Scotland should come to data sharing agreement and regular data feed with the DWP so they can identify universal credit claimants who are getting the carers element of universal credit. This will allow SSS to identify claimants not claiming Scottish carer's assistance and let them know they may be entitled to additional support.

- Question 25: Please give us any other views you want to share about the proposed Carer's Additional Person Payment.
- Question 26: Do you agree or disagree with the proposed future change to allow carers in full-time education to get Scottish Carer's Assistance? [Agree, Disagree, Unsure.]

Agree

- Question 27: Please write the reason why you agree or disagree with the proposed future change to allow carers in full-time education to get Scottish Carer's Assistance, or any other information you want to share on this question.

We agree with the proposal to extend support to carers in full-time education. Seeing full-time caring roles as being incompatible with study is outdated. It also means carers cannot improve their skills with a view to being ready to look for work when their caring role ends.

Many students have to take on some paid employment to supplement their student income, but this is less likely to be possible for carers. Recognising carers' roles while they study would supplement student income in place of work and enable students to continue with their studies, improving their work opportunities when their caring role ends.

- Question 28: Do you agree or disagree with the proposed future change to allow carers to add together hours spent caring for two people to reach the 35 hour caring requirement? [Agree, Disagree, Unsure.]

Agree

- Question 29: Please write the reason why you agree or disagree with the proposed future change to allow carers to add together hours spent caring for two people to reach the 35 hour caring requirement, or any other information you want to share on this question.

This may make a difference to a carer whose time is split between more than one cared-for person, and where they cannot otherwise get the financial support for their caring role.

- Question 30: Do you agree or disagree with the proposed future change to continue to pay Scottish Carer's Assistance for 12 weeks (rather than 8 weeks) after the death of a cared for person? [Agree, Disagree, Unsure.]

Agree

- Question 31: Please write the reason why you agree or disagree with the proposed future change to continue to pay Scottish Carer's Assistance for 12 weeks (rather than 8 weeks) after the death of a cared for person, or any other information you want to share on this question.

We agree with the proposal to continue to pay Scottish carer's assistance after the death of a cared for person. We welcome the commitment of the Scottish Government to explore the possibility of continuing to pay carer's assistance for an additional period in other circumstances, such as when a person's caring role ends. We believe this approach would provide carers with a period of support whilst they adjust to their new level of income.

- Question 32: Do you agree or disagree with the proposed future change to continue to pay Scottish Carer's Assistance for 12 weeks when a cared for person goes into hospital or residential care? [Agree, Disagree, Unsure.]

Agree

- Question 33: Please write the reason why you agree or disagree with the proposed future change to continue to pay Scottish Carer's Assistance for 12 weeks when a cared for person goes into hospital or residential care, or any other information you want to share on this question.

A carer's role does not end if the person they are caring for is taken into hospital. For example, carers may continue to provide care such as hospital visits, shopping, laundry, and advocating with medical and other care staff. Carers may not be able pick-up work for a temporary period while the person they are caring for is in hospital or residential care.

We agree with the proposal, but as noted there would need to be agreement with the DWP to ensure Scottish carer assistance remains a passport to wider forms or reserved support within the benefit system.

- Question 34: Do you agree or disagree with the proposed future change to increase the earnings limit for Scottish Carer's Assistance? [Agree, Disagree, Unsure.]

Agree

- Question 35: Please write the reason why you agree or disagree with the proposed future change to increase the earnings limit for Scottish Carer's Assistance, or any other information you want to share on this question.

This will allow more carers, many of whom will be in low income households, to receive the support they need.

- Question 36: Do you agree or disagree that the earnings threshold should be set at a level which would allow carers to work 16 hours a week alongside their caring role? [Agree, Disagree, Unsure.]

- Question 37: Please write the reason why you agree or disagree that the earnings threshold should be set at a level which would allow carers to work 16 hours a week alongside their caring role, or any other information you want to share on this question.

- Question 38: Do you agree or disagree with the proposal to look at a 'run on' after a carer earns over the earnings limit in future? [Agree, Disagree, Unsure.]

Agree

- Question 39: Please write the reason why you agree or disagree with the proposal to look at a 'run on' after a carer earns over the earnings limit in future, or any other information you want to share on this question.

As above, allowing a run-on of carers' benefits in situations where a carer no longer meets the entitlement conditions, would allow carers to transition to their lower income, or remain entitled to Scottish carer's assistance when there are fluctuations in income.

However, for all the proposed run-on scenarios, we are conscious that some individuals are not aware that their entitlement to benefits has ended, nor do they seek advice and support, until payments stop. This could be because the individual has communication difficulties or due to mental health or other reasons, avoids official communications or for other reasons. This is important because if the benefit payments continue for 12 weeks after there has been a determination that an individual is no longer entitled to the assistance, they will be out of time for a redetermination by the time the payments stop. This is another reason that it is important that there is an inclusive and responsive communication strategy, but also guidance to ensure that in such circumstances a later re-determination request is accepted by the agency, should the individual wish to challenge the determination to end their award.

- Question 40: Do you agree or disagree that a payment for long term carers should be considered further? [Agree, Disagree, Unsure.]

Agree

- Question 41: Please write the reason why you agree or disagree that a payment for long term carers should be considered further, or any other information you want to share on this question.

- Question 42: If a payment for long term carers was considered, what should the payment look like and who should it be for?

- Question 43: Please give us any other views you want to share about the proposals for future changes to Scottish Carer's Assistance.

- Question 44: Please set out any information you wish to share on the impact of Scottish Carer's Assistance on groups who share protected characteristics.

- Question 45: Please set out any information you wish to share on the impact of Scottish Carer's Assistance on Island communities.
- Question 46: Please set out any information you wish to share on the impact of Scottish Carer's Assistance on reducing inequality caused by socio-economic disadvantage.

Because carers allowance, and Scottish carers assistance, count as income for universal credit and other means-tested benefits, this means that lower income households do not benefit from carer's support as much as better off households. In the medium term one option would be for carer's allowance to be treated like disability assistance, and for it to be disregarded for means-tested benefits. Analysis should be done to understand the impact of such a policy.

- Question 47: Please set out any information you wish to share on the impact of Scottish Carer's Assistance on children's rights and wellbeing.
- Question 48: Please set out any information you wish to share on the impact of Scottish Carer's Assistance on businesses

For more information contact: Ed Pybus, Policy and Parliamentary Officer, CPAG in Scotland

Email: epybus@cpagscotland.org.uk
Phone: 0141 552 3545 Mobile: 07903 638 226