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04 September 2023

Dear Judith and Mark,

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

Thank you for your scrutiny report of 8th June on the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023. Please find attached a copy of the Scottish Government's response to your report on the draft regulations and recommendations set out in the annex below. I have accepted or partially accepted all of the recommendations you have made, and have noted your observations. Alongside sending this response, I am pleased to confirm that Scottish Ministers have today laid the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 and accompanying documents in Parliament.

I welcome the Commission's positive feedback on the changes that we are making through Carer Support Payment and the extensive research and engagement we have undertaken in developing plans for how the benefit will work from launch as well as future improvements.

I am pleased that we will be able to extend support to more carers in education from launch. However, I recognise the concerns the Commission highlights in the report regarding carers in education who will not be eligible for the benefit. While a key aim of our benefit is to help to remove barriers to opportunities for carers and to provide more stable support, we also need to ensure that the changes we make do not lead to young carers taking on more substantive caring roles in a way which would have a negative impact on their education or wellbeing.

Nevertheless, as set out in the response below, we will continue to consider how we can best support young carers while protecting their education and wellbeing, including through

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the evaluation of the benefit and ongoing work to improve both Carer Support Payment and the Young Carer Grant.

I am pleased to confirm that we will begin to roll out Carer Support Payment from the end of November this year, initially in the pilot local authority areas of Dundee City, Perth and Kinross and Na h'Eileanan Siar (Western Isles). Following this, from February 2024, we will begin to transfer the benefits of those already receiving Carer's Allowance so that they will begin receiving Carer Support Payment instead. This will happen across the country and not just in the initial pilot areas.

From spring 2024 we will begin the national roll out of the benefit. We will take a phased approach to doing this, similar to the roll out of Adult Disability Payment, opening up new applications to the benefit to more areas as soon as this can be done safely and securely, to be available nationally by autumn 2024. Given the complexity of Carer Support Payment, which the Commission recognises in the report, detailed joint work and integrations are required with the Department for Work and Pensions and other departments to ensure we can deliver this in a way which will protect the support that carers rely on across the devolved and reserved benefits systems. Amending regulations will be brought forward to expand availability of the benefit to further areas of the country, when this has been agreed with the Department for Work and Pensions and when it is safe and secure to do so. This roll out approach will also allow us to deliver continuous improvements to the Carer Support Payment service as we expand access to the benefit.

Once the benefit is available nationally and case transfer is complete we will then begin to deliver further planned priority improvements, including new extra support for those caring for more than one person, and extended support for carers after the loss of the person for whom they care.

Thank you again for your continued advice and support. I am grateful to SCoSS members for the positive way in which they have engaged with officials and the patience they have shown throughout the process, given some of the additional challenges as a result of the complexity of the benefit, and for their effective and helpful scrutiny of the regulations.

I have copied this letter to the Social Justice and Social Security Committee and the Delegated Powers and Law Reform Committee.

Yours sincerely,



SHIRLEY-ANNE SOMERVILLE

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CARER SUPPORT PAYMENT REGULATIONS 2023: SCOTTISH COMMISSION ON SOCIAL SECURITY RECOMMENDATIONS AND OBSERVATIONS

Recommendation	Accept/ Partially accept /Decline	Response
<p>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.</p>	<p>Accept.</p>	<p>The aims for Carer Support Payment were developed through a range of work with carers and support organisations and have informed how the benefit has been designed and will be delivered. We recognise that Carer Support Payment from launch will not immediately fully achieve all of the aims we have for carers. These aims are intended to continue to guide the development of the benefit on an ongoing basis.</p> <p>This includes the improvements we are already committed to, for example, providing additional support to those with more than one significant caring role in recognition of the impact of this on their health and wellbeing, and changes to provide more stable support, by increasing the amount of time support is paid after the loss of a cared for person and providing assistance where the carer or person they care for is challenging a change to their benefits.</p> <p>Our work to ensure that Carer Support Payment is joined up with wider support and services will also begin from launch and is intended to develop over time alongside the wider improvements we will make to the benefit. We are currently developing signposting text directing carers to wider support services, including support available under the Carers Act, which will be embedded in our client letters, notifications and online content. We are working across Scottish Government and Agency to develop targeted signposting for carers at moments of transition, including support to access and stay in work and education, and bereavement support when a caring role comes to an end.</p> <p>We are also ensuring that our Carer Support Payment communications strategy builds on work already undertaken by health and social care colleagues to build awareness of unpaid care, as well as promoting awareness of the new benefit and developing learning resources for frontline Agency staff, including information on carer identification, and understanding carer needs.</p> <p>We are also supporting research to further identify barriers to the take-up of Carer Support Payment which could be mitigated through service join-up, in line with wider work on the</p>

		<p>benefit take-up strategy. We are continuing to engage with stakeholders on join-up through our Carer Benefits Advisory Group and will continue to seek opportunities to improve carer identification, streamline information available to carers, and to collaborate across Scottish Government policy areas to improve outcomes for carers in Scotland.</p>
<p>2: Carer Support Payment's aims should be reinforced in communications with carers in order that they remain clear and unambiguous.</p>	<p>Accept</p>	<p>Work is ongoing on the development and delivery of the overall communications and engagement strategy for Carer Support Payment. The key aims of this strategy include ensuring that all those who need to understand the benefit, what it is for and who should apply, and to encourage applications from all those who are eligible. Ensuring that carers, the people they care for, support organisations and others are aware of what the benefit is for and what we are trying to achieve will be a key part of this. As such the Carer Support Payment aims are key to this strategy.</p> <p>The aims are also reflected in the way existing communications have been developed and are continuing to develop. For example, client communications and notifications and guidance for Social Security Scotland have been designed with carers and others who will use the benefit to ensure these are clear, and reflect the aims around providing recognition for the caring role and supporting carers to access all the support they are entitled to. Key messaging underpinning all communication outputs will also be user tested so messages are clear and eligible carers can easily understand the aim of the payment, the eligibility criteria and how it can support them, including 'underlying entitlement'. This will include outputs in addition to client communications and notifications including, for example, guidance, factsheets, posters, leaflets and social media.</p> <p>We are also aware from our work with carers, support organisations and colleagues across government that many carers may not see themselves as carers and that this is a key barrier to accessing support. This will be an important part of our communications strategy to support the aim of maximising take-up.</p> <p>Where possible our communications will tell the stories of real carers to help boost understanding of the caring role and what it means to be a carer, and raise awareness of the variety of ways someone can be a carer. Our communications strategy will also seek to reach carers and disabled people through the professional and organisations who support them, to both share information and hear their feedback.</p>

<p>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.</p>	<p>Accept.</p>	<p>The policy from pilot launch on access to Carer Support Payment for young carers in full-time education reflects earlier stakeholder feedback on the importance of protecting young carers against inappropriate caring roles, and the need to avoid incentivising young carers to take on significant caring responsibilities. The approach is in line with the overall intention for Carer Support Payment to remain an 'income replacement' benefit, and recognises that support for young people aged 16 to 19 in full-time non-advanced education may be provided to their parents or guardians through Child Benefit as well as Universal Credit or Child Tax Credits, if they are on low incomes.</p> <p>The draft regulations also provide for an extension to eligibility which will be introduced as part of the national roll-out of the benefit. This will provide access to the benefit for carers aged 16 to 19 in full-time non-advanced education who:</p> <ul style="list-style-type: none"> • are without parental support • are responsible for a child or qualifying young person • are in a couple where one or both are students • are in receipt of certain disability benefits and assessed or treated as having a limited capability for work <p>This is because we recognise these carers have additional barriers or responsibilities and would not have access to support from parents or guardians in the same way as others aged 16 to 19. Taken together, the changes are anticipated to benefit around 1,500 carers each year, who will be able to access support through Carer Support Payment while studying full-time.</p> <p>We note the concerns raised that the rules could add complexity to eligibility that may prove to be a barrier to access for some who would be entitled. We are committed to maximising take-up of support and will work to ensure the rules are set out as clearly as possible in communications for carers, the people they care for, support organisations and others. As part of our communication and engagement strategy we will draw on research and evidence around young carers and will use key messages and engagement activities to explain the value and aims of Carer Support Payment to young adult carers and those in continuing education.</p> <p>We also recognise that carers and stakeholders have raised concerns recently that the continuation of an education restriction for young people in full-time non-advanced education could risk incentivising young carers to give up education to access Carer Support Payment.</p>
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<p>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.</p>	<p>Accept</p>	<p>We will take into account the findings of the evaluation of Carer Support Payment alongside ongoing feedback from clients, Social Security Scotland, and support organisations in considering whether changes should be made to Carer Support Payment eligibility rules around full-time education.</p> <p>Any potential changes would need to be considered in the wider context of the improvements to Carer Support Payment to which we are already committed after case transfer is complete, and the wider landscape of support for carers, including ongoing work to consider improvements to Young Carer Grant following the findings of the interim evaluation of this support.</p> <p>As with any changes that would extend eligibility for the benefit or diverge from how Carer's Allowance works now (or Carer Support Payment will work on launch), we would also need to consider the affordability and sustainability of any such change, and the implications for wider support for carers, provided by the Department for Work and Pensions and others.</p> <p>While more carers overall will be able to access support as we have extended eligibility to Carer Support Payment to many full-time students for the first time, we recognise that this could be viewed as a gap, where a particular group of young carers may feel disadvantaged.</p> <p>We have set out the policy intent behind the rules which will apply to Carer Support Payment from launch and as noted we will carry out further evaluation and research on how this impacts on young carers in full-time non-advanced education. We are also continuing to consider the findings of the interim evaluation of Young Carer Grant and whether any changes should be made to the benefit as a result of this. We will consider the Commission's recommendation in this context to ensure we have a consistent, effective long term approach across both benefits.</p>
<p>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.</p>	<p>Accept</p>	<p>As the Commission notes, powers in the Social Security (Scotland) Act 2018, as amended by the Social Security Administration and Tribunal Membership (Scotland) Act 2020, allow for Carer Support Payment Regulations to specify situations in which an ongoing award of the benefit may be set to £0 or nil rated, as set out in regulation 23.</p>
<p>6: We welcome the provision to set Carer Support Payments to £0 when earnings are over the limit. However, the Scottish</p>	<p>Accept</p>	

Government should consider redrafting it to avoid any potential incompatibility with enabling powers or contradictions within the regulations.

The policy intent of the draft regulation 23 is to allow for payments of Carer Support Payment to stop when a carer is not entitled to support, but this is expected to be temporary. This is to prevent carers having to re-apply for support after short gaps in entitlement, to support our overall aim of providing more stable support. This also recognises the concerns we have heard from stakeholders that powers to suspend ongoing payments of benefits should not be too broad.

We have considered the Board's feedback in the scrutiny report (in terms of this recommendation but also recommendations 8 and 9 which also relate to nil rating), and through the engagement during the scrutiny period, as well as the feedback provided by stakeholders during the scrutiny process and during the public consultation on the benefit. We appreciate that, while there is overall support for the principle of a Carer Support Payment award being stopped without being ended, and without a requirement to re-apply, there is confusion around the use of nil-rating in the situations set out in the initial draft regulations.

In particular, we appreciate that providing for awards to be set to £0 when carers do have entitlement but are receiving other support (under regulation 16), but also providing in other situations for awards to be set to £0 where carers have no entitlement, may be confusing for carers and others using the benefit. This is because carers with 'underlying entitlement' in the first situation would be able to access additional amounts in some reserved benefits, but carers receiving at £0 award in the second situation would not.

In light of this we have amended draft regulation 23 to provide for a different approach. We have renamed the regulation 'Temporary stop in entitlement' and the revised drafting no longer provides for nil rating. The drafting now provides that where a determination without application has been made that an individual is no longer entitled to Carer Support Payment because:

- they have earnings over the limit in respect of an award week
- a cared for person has relinquished their qualifying disability benefit, or
- they have exceeded the permitted breaks in care for a given period,

that a determination without application can be made to bring them back into entitlement if, within 26 weeks of the determination ending entitlement, it is established that they once again meet the criteria – in that their earnings are below the limit, or they meet the criteria in terms of providing the required amount of care to someone receiving a qualifying disability benefit.

		<p>The revised drafting also provides separately that a determination without application can be made that a carer is no longer entitled to Carer Support Payment if they are caring for someone whose qualifying disability benefit has been:</p> <ul style="list-style-type: none"> • reduced to £0 (other than in situations where backdated payments of a Social Security Scotland qualifying disability benefit are reduced to £0 by payments of short-term assistance that the cared for person has already received) • stopped due to a stay in hospital or residential care • suspended as result of a failure to provide information or uncertainty over entitlement, and that a further determination without application can be made that a carer is entitled again to Carer Support Payment if, within 26 weeks, the qualifying disability benefit is paid again at a rate of more than £0 or the suspension is ended. This also provides for payments of Carer Support Payment to be made in respect of the period for which the qualifying disability benefit was suspended, in situations where it is determined that the qualifying disability benefit should have been paid during this period. <p>The revised drafting will have the same effect on carers' payments of Carer Support Payment and entitlement to any linked support but is intended to provide greater clarity in the regulations, and for carers and others around their entitlement. Carers will receive a change of award notice where it is determined in any of the above situations that they are no longer entitled to Carer Support Payment and this will set out that they can contact us within 26 weeks if they become eligible again and their award may be reinstated. It will also note that if they do not become eligible again within 26 weeks they will be required to make a new application for support.</p> <p>It would remain the case, as with the previous nil-rating provisions, that carers would be able to request a re-determination and an appeal if they disagree with determinations in any of the above circumstances.</p>
<p>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</p>	<p>Accept</p>	<p>As set out above, we have amended draft regulation 23 to provide for an alternative approach where there are changes to the qualifying disability benefits of the person being cared for. At the same time, we have also provided further detail on the changes which should affect Carer Support Payment awards.</p>

<p>qualifying disability benefit is intended to result in CSP being set to £0.</p>	<p>In particular, further detail is included on the situations in which there could be a 'temporary stop in entitlement' to Carer Support Payment in response to changes in qualifying disability benefits, where these are administered by the Department for Work and Pensions (DWP). In particular, in addition to providing for a 'temporary stop in entitlement' to Carer Support Payment where a DWP administered qualifying benefit is suspended, the updated provisions at Regulation 23(3)(b) allow for a 'temporary stop in entitlement' to Carer Support Payment where a DWP administered qualifying benefit ends as a result of the cared for person being admitted to a hospital or care home or being in legal detention.</p> <p>In relation to the point regarding the impact of short-term assistance on the payment of a qualifying disability benefit administered by Social Security Scotland, this is also addressed by the revised drafting of regulation 23. This provides that, in a situation where a Carer Support Payment award has been ended due to a cared for person's qualifying disability benefit being reduced to £0, it can be reinstated where a determination is made that the cared for person is entitled to the benefit again, and that the Carer Support Payment entitlement begins on the first day of the award week in which the cared for person's entitlement to the qualifying disability benefit begins. It remains the case that Carer Support Payment should not continue to be paid where a cared for person is receiving short-term assistance in place of their qualifying disability benefit.</p> <p>Following discussions with the Commission we have also updated regulation 23 to be clearer on the policy intent where there is a temporary stop to a Carer Support Payment award due to the cared for person's qualifying disability benefit being suspended. The intention is that Carer Support Payment would end after four weeks where the cared for person's qualifying disability benefit has been suspended as a result of a failure to provide information (or where the benefit is administered by DWP, where entitlement is in question for other reasons). If, following a suspension of that person's qualifying disability benefit, it is decided that the individual should have been entitled to receive the benefit during this period and the benefit is reinstated and paid in respect of this period, the same should happen with the Carer Support Payment award. A determination would be made that the carer should have been receiving payments of Carer Support Payment during the period for which it was ended due to the qualifying benefit suspension.</p>
<p>8: Regulations must clearly set out when one or another of the nil award provisions</p>	<p>Accept.</p> <p>As set out above, we have amended draft regulation 23 to provide for a different approach where a carer is temporarily not entitled to support. One of the reasons for this is to provide greater clarity on the difference between situations where a carer is temporarily not entitled to</p>

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.

support, and where they are entitled to an award of £0 due to receiving an overlapping benefit which is paid at the level of Carer Support Payment or higher (under draft regulation 16). In particular, this is intended to ensure it is clearer for carers where they would be entitled to additional support in other benefits, and where they would not.

A carer receiving a £0 award under regulation 16 remains entitled to Carer Support Payment but does not receive payments, however, under the updated draft regulation 23 a carer who is temporarily not entitled to support would have their award ended through a determination without application. This would mean that where a carer who is receiving a £0 award under regulation 16 with underlying entitlement has a change of circumstances which is covered under draft regulation 23, their award would also be ended. This is because they should not be entitled to any additional amounts in other support for the period for which they are temporarily not entitled, as opposed to periods for which they would have underlying entitlement.

Updates to draft regulation 23 also mean that where a carer's award has been ended through a determination without application, due to a temporary stop in entitlement, their receipt of any overlapping benefits would be an issue only from any point at which their Carer Support Payment was later reinstated following a change of circumstances.

In terms of communications with clients, in addition to the changes to the provisions at draft regulation 23, clients also receive different award notices depending on their circumstances. Clients who apply for Carer Support Payment and are awarded a payment of £0 due to underlying entitlement would receive a determination notice setting this out, highlighting the impact that having underlying entitlement can have on other support, and providing links to sources of further information and advice. Clients who begin receiving an overlapping benefit during an ongoing award of Carer Support Payment (for example where they begin to receive State Pension) will receive a change of award notice which also includes this information.

Clients whose awards would be ended under the revised regulation 23 due to a temporary stop in their entitlement, would receive a change of award notice to inform them of this, and the reasons for this. The letter would note, in line with the draft regulations, that they should contact us if their circumstances change within 6 months so that we may consider their entitlement to Carer Support Payment, and that if they do not return to entitlement within 6 months, they will need to re-apply if they become eligible again in future.

		<p>In both situations – an award of £0 with underlying entitlement, and a determination without application following a change of circumstances – this would be a determination of entitlement so carers would have the same re-determination and appeal rights where there is a decision to award underlying entitlement (or to change an award to underlying entitlement) and for decisions to end an award under regulation 23. Information on re-determination and appeal rights will also be included in the notifications.</p>
<p>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.</p>	<p>Accept.</p>	<p>The earnings assessment for Carer Support Payment will largely mirror that of Carer's Allowance, in line with our commitment to a safe and secure transfer of benefits for current clients and avoiding a two-tier system. As such, while we are working to ensure processes, and the information and guidance provided to clients and others are as simple as possible, complexities will necessarily remain in how earnings are assessed.</p> <p>We have been working with DWP in developing our processes, including detailed consideration of existing decision-making guidance and regulations to understand the 'as is' processes and how this currently works in Carer's Allowance. We have also looked at other areas of government in which complex income assessments are required to learn from wider experiences, for example, within the Student Awards Agency for Scotland (SAAS).</p> <p>Assessment and review of client earnings will use a mix of automated processes, and processes using the SPM system which is used for our devolved benefits, and manual, client advisor processes. Automated processes will be used where possible to support decision making.</p> <p>Decision making guidance for Carer Support Payment is being developed by the policy team, with input from Programme and Agency colleagues, and both operational and decision making guidance will be tested through model office processes. Draft decision making guidance has also been shared with third sector organisations who provide welfare advice to carers for feedback to help ensure this is as clear as possible for those supporting carers to access the benefit.</p> <p>From launch, the initial pilot period will allow us to test how processes will work on smaller volumes of applicants, and help identify any potential issues around earnings assessments.</p> <p>Around 10-15% of Carer Support Payment clients are anticipated to be in employment, with only a smaller-group of these clients having more complex earnings or earnings which are close to the Carer Support Payment limit so we would anticipate small numbers of applications requiring</p>

		<p>more complex earnings assessments.</p> <p>The overall resourcing approach within Social Security Scotland for Carer Support Payment will be a 'one team' approach with client advisors working on both new applications and case transfers. The intention is not to have a specialist team of people working on earnings assessment but to initially have a small group of client advisors who will focus on this work, allowing them to build up skills and expertise on this, particularly during the pilot where volumes are lower, and to use this to support and train others in the wider team. We have been working with Social Security Scotland in developing the earnings assessment approach and with analysts to establish resourcing estimates and to support the development of the resourcing approach for earnings assessments. Meanwhile, improvements to automation and gathering earnings information are being developed for the national roll out of Carer Support Payment.</p> <p>In terms of ensuring that lessons can be learned quickly once Carer Support Payment is live, there is a dedicated 'lessons learned' team within the Social Security Programme which will support this. The role of the team is to drive continuous improvement and support problem solving. The team has already run sessions with the Carer Support Payment team, to share lessons learned from previous benefit deliveries which would be of benefit for the development and delivery of Carer Support Payment, and further sessions are planned. The team use virtual and digital tools to complement the current hybrid working model to build lessons learned activities into the Programme lifecycle, drawing on identified strengths for benefit launches, quickly identifying challenges and building a continuous improvement culture across the Programme.</p> <p>The Scottish Government also works closely with the Carer Benefits Advisory Group to identify and address potential issues and to evaluate the efficacy of policy and processes. In addition, monthly meetings with Child Poverty Action Group, whose Early Warning System identifies trends and issues in benefit delivery, feed into lessons learned and continuous improvement in the development of Carer Support Payment and will continue to be valued in implementation of the benefit.</p>
<p>10: To avoid overpayments developing, Social Security Scotland processes must respond quickly to changes in earnings identified</p>	<p>Accept.</p>	<p>We recognise the issues there have been in the past in relation to overpayments of Carer's Allowance and that these were largely due to situations where carers had earnings over the limit. These have been taken into account in our work to design Carer Support Payment.</p> <p>From pilot launch of Carer Support Payment we will have access to information from His</p>

through HMRC data feeds, and changes reported directly by individual carers.

Majesty's Revenue and Customs (HMRC) on gross earnings for employed earners. This will be comprised of data on the amount of taxable pay, payment date and frequency. This will allow us to verify on application whether carers have earnings from employment and provide an indication of whether these earnings are over the earnings threshold (or over the threshold on average). Carer Support Payment systems will transform the data received from HMRC into weekly earnings figures. Where the initial check on earnings data has been completed and the client is entitled due to their weekly earnings or average weekly earnings being below the threshold, Carer Support Payment will be awarded and put into continuous payment.

We will also have a system of alerts which will use the HMRC data as a safeguard to prevent overpayments where carers have earnings over the limit. Where carers are employed, an earnings report from HMRC will be received every 28 days. In addition to this, Social Security Scotland Client Advisers will be able to perform checks on earnings using HMRC data whenever needed. Systems will flag where carers have earnings over the threshold and this will create a task for client advisors to check earnings with the carer. The system will look back over clients' earnings information and flag the need for action if any week is either above the threshold (if previously below) or below the threshold (if previously above).

If HMRC checks identify that a carer's gross earnings are over the limit for a given week, this should lead to a task being generated for a client advisor to contact the carer to check whether they have any allowable deductions that could bring them within the earnings threshold. If we cannot confirm that the carer remains eligible, there would be a determination without application and their Carer Support Payment award would be ended for the benefit week following the change.

In line with the provision for temporary stops in entitlement their award could be reinstated if they return to eligibility again within 26 weeks. They would need to reapply again for the benefit if they did not return to eligibility at any point during this 26 week period. We will also be able to use suspension powers to stop payments where we have requested information from carers on their earnings to confirm they remain entitled to Carer Support Payment, and they have not provided this on time.

While alerts and information will be available from HMRC on earnings, it will remain the case that carers will have a duty to report changes which would affect their entitlement to the benefit, and this will be set out clearly in information and communications provided to carers.

Self-employed carers

Information on the earnings of self-employed carers will not be available from HMRC. Data will only be available for 'employed earners'. For self-employed earners, information on earnings will need to be supplied by the carer themselves, with evidence of income and expenditure on application. We will use planned reviews of earnings for self-employed carers to reduce the risk of overpayments. This would be done on an annual basis for those self-employed carers who have been self-employed for a year or more or more frequently when required given the individual clients' circumstances.

Straight-through processing

Carer Support Payment systems have been designed to allow the majority of applications to be processed 'straight-through' using automated decision making. This is possible because information will be available to systems to determine eligibility – in relation to the qualifying disability benefit paid to the person being cared for, absence of overlapping benefits or other Carer Support Payment awards in respect of the same carer or cared for person, or earnings data from HMRC. Carers will self-report hours of caring and confirm this via a declaration.

Use of straight-through processing for the majority of straightforward decisions is intended to allow Social Security Scotland client advisers to focus on the more complex cases, and the requirement for manual processes to support earnings assessment, including changes in circumstances relating to earnings.

Payment in arrears as standard

The decision has also been taken to pay Carer Support Payment four weekly in arrears as standard, rather than to offer a weekly in advance payment option as currently exists within Carer's Allowance. This is intended to reduce the potential for overpayments by allowing more time for a change of circumstances to be reported and reflected in a carer's award. As earnings will be allocated forwards so the amount earned in one week will affect entitlement in the next, this will allow additional time for carers to report changes in earnings and for these to be reflected in changes to their award (or for earnings information provided by HMRC to be checked with carers and reflected in changes).

		<p>Clients who currently receive Carer's Allowance weekly in advance will continue to do so on transfer to Carer Support Payment, in line with our case transfer principles. This would be a reducing number over time as this payment cycle would not be open to new clients. A small number of carers who are terminally ill or who are caring for someone who is terminally ill will also be able to receive weekly in advance payments.</p>
<p>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.</p>	<p>Accept</p>	<p>As set out above, a key aim of the communications and engagement strategy for Carer Support Payment is to ensure that carers understand the benefit, and eligibility for this, and that all eligible carers are encouraged and supported to apply.</p> <p>We recognise that understanding whether or not a carer is eligible under the earnings rules will be one of the most complex areas and that to support take-up of the benefit, it will be important to ensure the earnings assessment rules are well understood. It will also be vital to ensure carers to understand their duties around reporting a change of circumstances to prevent overpayments.</p> <p>Work is ongoing on the communications and engagement strategy and the activities and products which will be part of this, and this will include information for carers across a number of channels and in a number of formats, as well as stakeholder toolkits and roadshow events. As part of this we are considering the best approach to providing clear and helpful information for carers, and those who support them, on the earnings rules which will apply to Carer Support Payment, to understand their eligibility and how changes to earnings may affect entitlement. In addition to information available on the application form, mygov.scot and decision letters, all key messaging, engagement activity and resulting outputs will provide clear messaging around earning thresholds. Factsheets will be available in accessible formats, including BSL, EasyRead and community languages. We will work with local and national carers organisations, and their networks, to circulate information to places unpaid carers attend so that this information is available in places we know that unpaid carers are using already.</p> <p>In developing the benefit, the earnings elements of the different application channels, notifications and change of circumstances materials have been user tested to make these as clear as possible to carers in relation to the information we require on earnings and when to report changes. Annual uprating letters to be provided to carers will also provide a reminder of requirements to report earnings changes. These have been designed to be shorter and clearer than the Carer's Allowance uprating letters currently in use, in recognition of the concerns raised about these in the Work and Pensions Select Committee Inquiry which looked at the issues</p>

		<p>around overpayments of Carer's Allowance.</p> <p>As with all aspects of the benefit we will look to continuously improve the information and communications around the earnings rules for Carer Support Payment in response to feedback from carers, those who support them, and Social Security Scotland staff.</p>
<p>12: The Scottish Government sets out the systems it plans to have in place to share data with the DWP to ensure relevant changes in Carer Support Payment awards are quickly and accurately reflected in Universal Credit awards.</p>	<p>Accept.</p>	<p>Data sharing agreements and processes are in place with the Department for Work and Pensions to ensure data can be shared on Carer Support Payment awards and changes and be reflected in DWP income-related benefits in the same way as Carer's Allowance. It will be important to ensure DWP have access to timely information on when Carer Support Payment is awarded or ended.</p> <p>There are a range of ways in which this will be done, depending on the information that needs to be shared, including integrations between systems and manual processes using single points of contact in Social Security Scotland and DWP.</p> <p>The mechanisms in place will share Carer Support Payment data to a central point in DWP and this will be shared with all of the affected DWP benefits by DWP from this central point. A nightly report of Scottish Government systems will identify any determination which has changed that day. These details will be extracted and sent to the DWP systems. This will allow DWP to implement any changes to impacted reserved benefits in an efficient manner.</p>
<p>13: Appeal rights should be introduced against the recovery of overpayments.</p>	<p>Partially accept.</p>	<p>Carers will have the right to request a re-determination and then an appeal where they disagree with a decision on their entitlement to Carer Support Payment.</p> <p>Where a determination of entitlement means that a carer has been overpaid Carer Support Payment, their liability to repay that overpayment will then be considered. If it is decided that the carer is liable for the overpayment, then we can seek to recover the overpayment through deductions from benefits (where this is over the small overpayments limit). If the carer disagrees with a decision to recover the overpayment through deductions, they have the right to challenge this decision through a re-determination and then an appeal.</p> <p>We are aware of concerns that the formal re-determination and appeal rights do not apply to decisions around liability for overpayments in the same way as they do to determinations of entitlement and determinations to recover overpayments by deduction.</p>

		<p>If it is considered that the carer is liable for an overpayment, and they disagree, they could request a review of this decision and this will be carried out by Social Security Scotland, however, this does not currently have the same status as a re-determination, and there would be no appeal process if the carer disagreed with the outcome of the review.</p> <p>We are therefore currently considering options for introducing a formal right to a review and appeal against decisions around liability for overpayments.</p>
<p>14: The Scottish Government should consider writing off small sums of overpaid Carer Support Payment.</p>	<p>Partially accept.</p>	<p>Social Security Scotland already operates a small overpayments limit in the same way as the Department for Work and Pensions (DWP). It is current Social Security Scotland policy across all benefits not to recover any overpayment of £65 or under. Where an overpayment is for an amount of £65 or less, the client will receive a single letter stating that there has been an overpayment, detailing the reason for the overpayment and the amount that has been overpaid. This letter states that although the overpayment has occurred, the client is not liable to pay it, as it is £65 or under and that they will not be contacted again on the matter. If a client is found liable to repay an overpayment of over £65 Social Security Scotland will seek to recover the whole amount – so it is not the case that we would not seek to recover the first £65 of any overpayment.</p> <p>The level of the small overpayments limit – £65 – has been set in line with that used by DWP. The DWP limit is set at this level on the basis that the costs of overpayment recovery would outweigh the amount recovered below this level. As Social Security Scotland is a relatively new agency, we do not have robust data at this stage on our own recovery costs to inform whether another level would be more appropriate. We will continue to keep this under review.</p>
<p>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.</p>	<p>Accept.</p>	<p>We recognise the concerns of older carers with only underlying entitlement to Carer's Allowance (and in future Carer Support Payment) and have worked through user research and testing with carers and support organisations to make our communications as clear and helpful as possible. In response to feedback, the award letters which will be provided to carers with underlying entitlement are clear that we recognise them as carers, though payments of Carer Support Payment cannot be made due to overlapping benefits.</p> <p>The letters also provide information on the impact that underlying entitlement to Carer Support Payment can have on other benefits, including Pension Credit. They also provide information on, and links to, wider carer support such as Carers Centres and where carers can access advice on financial support. As part of our continuous improvement work we also have plans to</p>

		<p>conduct further research with clients over state pension age to consider further actions we can take to improve the experience of the benefit for these carers.</p> <p>Work is ongoing on the communications and engagement strategy and this will take into account that a significant proportion of current Carer's Allowance recipients are over 50, as well as the complexities around supporting take-up for those with underlying entitlement only. The communications and engagement strategy will include a nuanced strand of messaging and activity that seeks to target older carers. Outputs will be available in formats that suit the communication needs of a range of carers, including taking into account the particular needs older carers may have.</p> <p>Views will continue to be gathered from older carers in relation to possible future improvements to these communications as part of lessons learned from the pilot of Carer Support Payment and continuous improvement work through pilot, national roll-out and beyond.</p>
<p>16: Case transfer letters should link older carers with Social Security Scotland's Local Delivery service and other face to face services.</p>	<p>Partially accept.</p>	<p>Carers whose benefits are transferring from Carer's Allowance to Social Security Scotland will receive two letters as part of this process – a 'welcome' letter which explains the case transfer process, and a determination notice once their Carer Support Payment award begins.</p> <p>We appreciate the Commission's concerns that receipt of these letters may be confusing for those with underlying entitlement. As the Commission notes, these case transfer letters have been developed through research with carers and support organisations, and research has included older carers – in particular carers who have only 'underlying entitlement' to Carer's Allowance, because they are in receipt of a State Pension.</p> <p>In light of this, they have been designed, similarly to the letters which will be provided to those receiving new awards of underlying entitlement, to signpost these carers to a range of support organisations and advice services, including organisations which provide advice on entitlement and access to benefits administered by the DWP and including face to face services. In addition, the letters clarify that carers with underlying entitlement may be eligible for additional benefits, and/or additional payments through benefits they are already in receipt of as a result of underlying entitlement to Carer Support Payment. Signposting information is also included in the text of annual uprating letters, providing an opportunity to keep in touch with clients with underlying entitlement and continue to signpost to wider support services. Carers receiving these letters will also be provided with the information they need to contact Social Security</p>

		<p>Scotland if they have any questions. However, the current letters do not directly signpost clients to the Social Security Scotland Local Delivery service. This is because the remit of this service is limited to providing information and support to apply for Social Security Scotland benefits they may be entitled to, rather than reserved benefits. At present there are no Social Security Scotland benefits which carers would be entitled to as a result of underlying entitlement to Carer Support Payment.</p> <p>We will consider any feedback provided on these letters and wider communications around underlying entitlement, and with older carers, to inform ongoing improvements to Carer Support Payment delivery and communications.</p>
<p>17: Redesigning the earnings rules and threshold should be a priority for the Scottish Government's plans for the future of Carer Support Payment.</p>	<p>Partially accept.</p>	<p>The public consultation on Scottish Carer's Assistance set out a number of improvements we propose to make to Carer Support Payment once case transfer from Carer's Allowance is complete and it is safe to do so. These proposals were informed by a Multi Criteria Analysis process which assessed a range of potential changes which could be made through Carer Support Payment. The proposals in the consultation included increases to the earnings threshold for Carer Support Payment, potentially linking this to a specific earnings rate, such as the Real Living Wage, and introducing a 'run on' of payments when a carer earns over the threshold, to provide more stable support. These were supported by a majority of those responding to the consultation, and we appreciate the Commission's feedback on the complexity and impacts of the current earnings rules and the recommendation to address these as a priority.</p> <p>Once case transfer is complete, our initial commitments to improve the support provided to carers are to provide extra support for those with more than one significant caring role through Carer's Additional Person Payment, and increase the 'run on' of support when the person being cared for dies. We are also committed to providing short-term assistance to support carers challenging a decision on their benefits or caring for someone who is challenging a decision on their disability benefits, and to incorporating Carer's Allowance Supplement so that it is paid alongside regular Carer Support Payments in future – ensuring carers receive the correct amount of support and have higher regular incomes.</p> <p>People responding to the consultation had a range of views on how any changes to the earnings rules for Carer Support Payment should work and we are continuing to consider the responses to the consultation to inform our future approach for Carer Support Payment once case transfer</p>

		<p>is complete. In doing so, we are aware of the need to balance any potential changes against the investment required to make those changes. We will need to decide how affordable and sustainable any improvements would be as part of the fixed Scottish budget, and ensure that changes are targeted where they will deliver the most benefit. We also know how important it is that any improvements we make don't do anything which would risk the other financial support carers get from reserved benefits, and we have dependencies on other government agencies such as the Department of Work and Pensions and His Majesty's Revenue and Customs, as well as external organisations, which can affect when we are able to make any changes.</p>
<p>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.</p>	<p>Accept.</p>	<p>We have updated draft regulation 2 to reflect the definition of "couple" used in the Welfare Reform Act 2012 and the Social Security (Scotland) Act 2018 to ensure that the provisions on abatement as set out in Regulation 17 function in line with policy intent – so that Carer Support Payment will affect a couple's means-tested benefits only where they are living together or as a household.</p>
<p>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.</p>	<p>Accept.</p>	<p>We agree that it would be clearer to use the correct legal language in this area and have updated references to the "care rate" in the draft regulations to refer instead to the "care component" of these benefits at the middle or highest rate.</p>
<p>20: The Scottish Government should ensure that the draft regulations include all required definitions of qualifying benefits and overlapping benefits.</p>	<p>Accept.</p>	<p>We have updated the draft regulations to include these definitions.</p>

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.

Accept.

The overall policy intent is that a young carer would be able to apply for the Young Carer Grant or Carer Support Payment depending on their personal circumstances, but would not be entitled to both payments at the same time.

Young Carer Grant aims to allow young carers to access opportunities that would be the norm for their non-caring peers. The entitlement criteria are more relaxed than for Carer Support Payment. Young carers need to be caring for an average of 16 hours a week, and this care can be added together where care is provided to more than one person. In general it is for young carers with less intensive roles who would not be eligible for Carer Support Payment, which requires care for over 35 hours a week for one cared for person and is intended to be an 'income-replacement' for those whose regular and substantial caring responsibilities mean they need support because they are unable to earn income, or earn sufficient income, from work.

We recognise caring roles can change and some young carers in receipt of Young Carer Grant may move on to become entitled to Carer Support Payment, or may not realise they are eligible until after they have applied for, and received Young Carer Grant.

In line with the above, the regulations are intended to ensure that young carers can apply for and receive Carer Support Payment in a year in which they have received Young Carer Grant. We appreciate it could be clearer in Regulation 12(2) that this should also be the case where a young carer wishes to apply for Carer Support Payment in a year in which they have received Young Carer Grant for care provided to a different person and have updated Regulation 12(2) to clarify this point.

The intention is also that a carer should not be able to apply for Young Carer Grant where they have been in receipt of Carer Support Payment or Carer's Allowance during the Young Carer Grant 'qualifying period'. To be eligible for Young Carer Grant, a young carer needs to have met the eligibility criteria over a period of 13 weeks which ends the day before their application is made.

The Young Carer Grant regulations at Regulation 7 provide that a carer will not be entitled to a Young Carer Grant where they are receiving Carer's Allowance (or in future Carer Support Payment) when they apply (Regulation 7(1)), or have applied for one of these benefits in respect of the qualifying period where it has not yet been determined that they are not entitled to one of them (Regulation 7(2)). We appreciate it could be clearer that the intention is also that a carer

		<p>will not be entitled to Young Carer Grant where they have received Carer's Allowance or Carer Support Payment at any point during the qualifying period for Young Carer Grant and we have included amendments in the schedule of the Carer Support Payment regulations (in Part 3 of Schedule 1 at paragraph 11)) to amend the Young Carer Grant regulations to clarify this point.</p> <p>On the third point in relation to the amendments proposed to the Young Carer Grant regulations, we have updated the regulations as the Commission is correct that the intention is to remove the phrase 'in respect of any of the persons being cared for' from Regulation 7(1) of the Young Carer Grant regulations. This is to clarify that it should not be possible for a carer to receive Young Carer Grant if they are already in receipt of Carer Support Payment or Carer's Allowance, regardless of whether the person to whom care is being provided for receipt of Carer Support Payment or Carer's Allowance is the same or a different person than the person named on the Young Carer Grant application.</p> <p>Overall, and as discussed in response to earlier recommendations, we appreciate the interactions between the two benefits are complex and that it will be important for carers to understand what they are entitled to between the two benefits and how to maximise their income, and we will work to provide the clearest possible information in our communications around both payments to support this.</p> <p>When a young carer applies for but doesn't meet the eligibility criteria for Carer Support Payment, they will be signposted through the application process to more information about Young Carer Grant as well as other carer support services.</p> <p>From launch of Carer Support Payment, and on an ongoing basis, we will consider any feedback from those accessing the benefit and Young Carer Grant on these interactions and the information and support provided to consider where improvements could be made if needed.</p> <p>As part of communication and engagement activity, key messaging, which will be available in a range of outputs, will support people moving from one benefit to the other. In particular, communication to young carers will be clear around expectations on moving to Carer Support Payment. This will include updating our resources to signpost young carers on what the most appropriate payment might be for their individual circumstances.</p>
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<p>22: If Employability Fund activity is no longer operational, regulation 13(5) should be amended to remove it from the definition of approved training.</p>	<p>Accept.</p>	<p>The Employability Fund ceased in March 2022, however is continuing for legacy participants until 31 March 2024. As there is not anticipated to be overlap between the fund and Carer Support Payment we have updated the draft regulations to remove reference to the Employability Fund.</p>
<p>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.</p>	<p>Partially accept.</p>	<p>Carer Support Payment regulations have been drafted so that the benefit will be available to carers aged 16 or over, in line with Carer's Allowance as provided for by Section 70 of the Social Security Contributions and Benefits Act 1992. Having considered the recent caselaw, and discussed with the DWP, we appreciate that the reference to age 16 in DWP legislation is to be treated as a reference to minimum school leaving age – so that Carer's Allowance could not be paid to a carer who is aged 16 but has not reached minimum school leaving age.</p> <p>DWP have advised that there is no change required to their legislation following the decision as the 'age 16' and 'not being in full-time education' provisions taken together effectively mean that carers below minimum school leaving age are unable to access the benefit.</p> <p>Carer Support Payment will be available to carers aged 16 or over as set out in the regulations and carers will be asked to confirm they are 16 on application. Carer Support Payment will also not be available on pilot launch to carers in full-time non-advanced education. As such, carers who are legally required to be in school (as they are below minimum school leaving age) would not be eligible. Carers will be asked on application if they are in full-time non advanced education. It is considered it would be unnecessarily complex and confusing to young applicants to include specific questions on minimum school leaving age at this stage, as the existing questions will ensure the vast majority of carers below school leaving age are identified as ineligible. It is possible that some carers in less formal home schooling may consider themselves to be studying less than full-time and we are looking at how it can be made clear to carers on application that informal schooling below minimum school leaving age is considered full-time non-advanced education for the purposes of Carer Support Payment eligibility.</p> <p>As part of the national roll out of the benefit, we will make changes which would allow some young carers in full-time non-advanced education to access Carer Support Payment. As such, including specific provision in the Carer Support Payment regulations to exclude carers who are below minimum school leaving age would mean some carers aged 16 in full-time non-advanced</p>

		<p>education, to whom we are aiming to extend support, would be unable to receive support. As such it is considered clearer to leave the minimum age at 16 only, and to allow carers to access the benefit depending on their wider circumstances.</p> <p>This approach also recognises that the minimum school leaving age is more complex in Scotland than in England. In England there is only one school leaving date, which is the last Friday in June. Students in Scotland can leave school either on 1 June (if they turn 16 between 1 March and 30 September of that year) or at the start of the Christmas holiday (if they run 16 between 1 October and the last day in February of that year). School Christmas holiday dates vary by local authority and from year to year. Legislating specifically for the minimum school leaving age would therefore add additional complexity to the application process, which may in turn act as a barrier to accessing the benefit.</p> <p>In practice we would expect there will be only a small numbers of carers who are aged 16 and under minimum school leaving age, but who are not in full-time non-advanced education – for example those who are home-schooled or in less formal schooling as highlighted by the Commission. We will look at how best to make the policy position clear to carers who are considering applying, or making applications for Carer Support Payment. We will also keep this under review as part of the wider work to consider the interactions between caring and education and the support which could be provided to young carers in particular.</p>
<p>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.</p>	<p>Accept.</p>	<p>An abatement process will be used in Carer Support Payment when a carer who applies for the benefit is in receipt of certain income-related benefits from the Department for Work and Pensions. The process is intended to offset overpayments of these income-related benefits which would otherwise be recovered by DWP. The regulations provide for the abatement process and the abatement calculation which will be used to adjust the initial Carer Support Payment award.</p> <p>Where Carer Support Payment is awarded, and an abatement process is needed, a date in the future would be selected as the date on which ongoing payments of Carer Support Payment would start.</p> <p>The amount of Carer Support Payment the carer would be entitled to between their chosen start date and this date would be calculated and this amount would be shared with DWP, along with the date ongoing payments of Carer Support Payment would start. DWP would provide a</p>

		<p>calculation of the amount by which the arrears of Carer Support Payment should be reduced, based on the amount which will have been overpaid by the relevant legacy benefits in the abatement period.</p> <p>Social Security Scotland would then pay the carer the remaining arrears of Carer Support Payment and ongoing payments will begin. We will provide the carer with a notification of their award, the amount they will be paid, how this has been calculated and the date on which regular payments of Carer Support Payment will begin. This will be a determination notice and carers will be able to challenge this if they disagree with the outcome of the abatement process.</p> <p>We are working with DWP on an agreement to keep this ‘abatement period’ as short as possible to prevent carers waiting too long for their initial payment of Carer Support Payment. However we recognise, as highlighted by the Commission, that it may be possible for other changes to the relevant legacy benefit award to affect the amount of this during the ‘abatement period’.</p> <p>As a result we have updated the draft regulations to provide for a more accurate calculation of the amount of a Carer Support Payment that is to be given by way of payment to the Secretary of State for Work and Pensions. The updated provisions will ensure that it is only the impact of the Carer Support Payment on the relevant legacy benefit that should be considered in this calculation and not other changes, unrelated to the Carer Support Payment award which may have been made to the carer’s relevant legacy benefit award.</p>
<p>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.</p>	<p>Accept.</p>	<p>Following discussions from the Commission, the initial draft regulations were updated to ensure these were clearer on the intended limits to Scottish Ministers’ discretion in relation to backdating. These provide that entitlement to assistance will always begin in the award week chosen by the applicant, unless the applicant did not meet the eligibility criteria at that time, in which case the Scottish Ministers have the power to choose a later date on which the eligibility criteria were met.</p> <p>Decision-making and operational guidance for Carer Support Payment on backdating will also be clear that a start date up to three months in the past can be chosen by the carer for any reason, provided they meet the eligibility criteria, and that Carer Support Payment may be backdated for longer than this where the qualifying disability benefit of the person being cared for is backdated for a longer period, again providing the carer meets the eligibility criteria for this period.</p>

		<p>We appreciate the further point raised by the Commission regarding situations where a carer may wish to backdate an award, or backdate this further, following an initial determination, potentially where they have received advice on their entitlement to do so after applying for support.</p> <p>In line with our duty to give individuals the assistance to which they are entitled we would want to ensure that carers would be able to receive all of the support they are entitled to in these circumstances.</p> <p>This would be possible in line with the provisions in Regulation 36(a) regarding determination following a change of circumstances where Scottish Ministers have 'become aware that a determination of an individual's entitlement was made in ignorance of a material fact'. This would allow us to make payments of Carer Support Payment for the longer period of backdated entitlement where the carer contacted us within 13 weeks of the decision (or later where it is considered they have a good reason for doing so). We will ensure that this point is also clear in decision-making and operational guidance on backdating for Carer Support Payment.</p>
<p>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.</p>	<p>Accept</p>	<p>The Commission raised these points during their scrutiny of the regulations and the wording of the regulations has been updated at Regulation 19 to ensure that it is clearer that the intention is for Carer Support Payment to be 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.</p> <p>Regulation 19 has also been updated to include a reference to the Department for Communities in Northern Ireland to allow for Carer Support Payment to be backdated in line with the qualifying disability benefit of the person being cared for, where the cared for person is receiving a Northern Ireland qualifying disability benefit.</p>

<p>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.</p>	<p>Accept.</p>	<p>The drafting here mirrors the drafting for Carer's Allowance in section 70 of the Social Security Contributions and Benefits Act 1992, and referred to the eligibility requirements other than the requirement to be providing care to a person in receipt of a qualifying disability benefit. However, in the context of the Carer Support Payment regulations we appreciate it may be clearer to set this out more specifically. We have updated the draft regulations to clarify the eligibility requirements which must continue to be satisfied by a carer following the death of a cared for person.</p>
<p>28: Draft regulation 16(3)(k) should be amended to separate Training Allowance and Contributory Employment and Support Allowance.</p>	<p>Accept.</p>	<p>We have updated the draft regulations to separate Training Allowance and Contributory Employment and Support Allowance.</p>
<p>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.</p>	<p>Accept.</p>	<p>In line with Carer's Allowance, it will not be possible for two people to receive Carer Support Payment where they are both caring for the same person, even where both carers would individually meet the eligibility criteria for the benefit.</p> <p>Regulation 24 provides for these situations, sometimes known as 'rival carers' situations – where two applications for Carer Support Payment are received from two different carers for care provided to the same person. This also provides for situations where there are multiple carers across Carer Support Payment and Carer's Allowance or Universal Credit Carer Element.</p> <p>The overall aim of our approach for Carer Support Payment, where two carers are entitled to support, is to ensure that carers are supported to come to a decision themselves on who benefits should be awarded to, with access to information on income maximisation as part of this decision making process.</p> <p>However, where the two carers do not agree, and both carers are entitled to support, regulations have been amended to allow for Scottish Ministers to determine which of the carers should be awarded the benefit. These situations are expected to be rare, however, this allows for Scottish Ministers to consider factors in addition to the main eligibility criteria for the benefit, including but not limited to whether the carers are family members of the cared for person, whether they live with or near the cared for person, or whether they receive any benefits on behalf of, or as a</p>

		<p>result of their responsibility for, the cared for person.</p> <p>Regulations also allow Scottish Ministers to have regard to the 'best interests' of the cared for person in making this determination. However, it is not our intention that there would be a requirement to involve the cared for person in all determinations. This is because we are aware from our work with DWP in this area, and from feedback from stakeholders, that these situations often arise due to complex family disputes, and our intention would be to avoid putting the cared for person at risk or in a difficult situation where they would rather not be involved. It may also not be possible to properly seek the views of the person being cared for where they are a young child or do not have capacity to share their views as part of this process. However, in some situations the person being cared for may contact us with views or information on the situation which could be taken into account.</p> <p>It will remain the case in these situations and in all Carer Support Payment awards that the person named on an application as the cared for person will be able to contact us to dispute an application or ongoing award. They will be sent a notification when a Carer Support Payment application is received to notify them about the application and of their rights to dispute the application if they disagree.</p> <p>We recognise that situations where there are multiple carers will be complex and we will ensure that we take into account any lessons learned from rival carer processes and feedback from those involved as part of continuous improvement of Carer Support Payment.</p>
<p>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.</p>	<p>Accept.</p>	<p>The approach for Carer Support Payment where there is more than one carer has been designed to be as consistent as possible with the approach taken in Carer's Allowance and Universal Credit, while remaining in line with our social security principles and the framework provided by the Social Security (Scotland) Act 2018. This consistency is intended to allow the cross-border and cross-benefit processes to work fairly and effectively.</p> <p>In line with our overall approach, the aim in these cross-border situations would be to encourage the carers to come to an agreement themselves on who should receive the support, but would allow for a determination to be made where there is no agreement. In cross-border situations the regulations provide for Scottish Ministers to make a determination on a Carer Support Payment award, taking into account the factors set out above, and in consultation with the Secretary of State for Work and Pension. Amendments to section 70 of the Social Security Contributions and</p>

		<p>Benefits Act 1992 will also provide for the Secretary of State to consult with Scottish Ministers in making determinations in these situations on Carer's Allowance and Universal Credit Carer Element.</p> <p>We are working with the Department for Work and Pensions to finalise processes for making determinations in situations where there is one carer in receipt of, or applying for Carer Support Payment, and another in receipt of, or applying for Carer's Allowance or the Universal Credit Carer Element.</p>
<p>31: Regulations should make clear the scope of the multiple applications rule, the provisions for removing entitlement and the right of appeal.</p>	<p>Accept.</p>	<p>We have set out our overall approach in situations with multiple applications above, and we have updated the provisions in the draft regulations to provide further detail on the approach which will be taken in these situations.</p> <p>In particular, the updated regulations provide that where there are multiple applications for care provided to the same person, where the two carers agree who should be awarded support, and it is not the carer who is currently in receipt of Carer Support Payment, a determination without application can be made to end that carer's Carer Support Payment award. This would be a determination of entitlement and the carer would be able to request a re-determination and then an appeal if there is a reason they then disagree with this decision.</p> <p>Where the two carers agree that the award should remain with the current recipient, a determination would be made that the second carer is not entitled to Carer Support Payment and they would have the right to request a re-determination and appeal this.</p> <p>Where the two carers do not agree, but information is received by Social Security Scotland that shows that either carer is not eligible for Carer Support Payment then that information can be used to either deny an initial application for the benefit, or to carry out a determination without application following a change of circumstances or a decision made in ignorance of material facts and end an existing award of Carer Support Payment. Carers would have re-determination and appeal rights in each of these situations.</p> <p>Where there is no agreement between the two carers and there is no evidence to suggest that either carer is not entitled to support, Scottish Ministers can make a determination to award Carer Support Payment to one of the two carers, having regard to the factors set out in the regulations.</p>

		<p>Where this is not the carer who is currently in receipt of Carer Support Payment, regulations allow for the award to be ended through a determination without application, The carer would have re-determination and appeal rights where they disagree with this decision. Where this is the carer who is currently in receipt of Carer Support Payment, the new application would be denied and the carer who had applied would have re-determination and appeal rights.</p>
<p>Observation</p> <p>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.</p>	<p>Noted</p>	<p>We appreciate the feedback from the Commission and from the stakeholders who engaged with the Commission as part of their scrutiny of the regulations.</p> <p>The proposal to extend Carer Support Payment to the majority of carers in full-time education was developed following research and consultation with carers and stakeholders who had highlighted this as a key issue with how the current Carer's Allowance benefit works, and a barrier to education, training and employment for unpaid carers, the majority of whom are women.</p> <p>The proposal was included in the public consultation on Scottish Carer's Assistance (as the benefit was known at the time) as a future change, post case transfer. The proposal received overwhelming support in the consultation (97% of respondents were in favour). We were pleased to be able to bring this change forward to the initial launch of the benefit, given it will mainly benefit those carers who are currently unable to access Carer's Allowance, or other social security benefits provided by the Department for Work and Pensions and poses a low risk to the safe and secure transfer of carers' benefits as a result.</p> <p>As set out above we will monitor the impact of this change and continue to consider whether and how we may improve this, if required, alongside working to deliver the further improvements to Carer Support Payment we are committed to in future.</p>
<p>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</p>	<p>Noted</p>	<p>We recognise the concerns of carers who have only an underlying entitlement to Carer's Allowance (and in future Carer Support Payment), particularly around the loss of recognition for their caring role, and the complexity of 'underlying entitlement' as a concept. We have taken this into consideration in the design of Carer Support Payment from launch.</p> <p>As the Commission notes, following the public consultation we are continuing to consider the potential for a longer term change to our carer benefits which would provide support and recognition for long term carers, alongside wider work to look at improvements to support for</p>

<p>they consider the future of CSP to work with the DWP on finding a better solution.</p>		<p>unpaid carers. As this is a new policy idea, work on this will require further work to consider the needs of these carers and the wider landscape of support and this will include looking at the current system of 'underlying entitlement' and how this works. Delivery of Carer Support Payment, including 'underlying entitlement' will also allow us to better understand the carers affected by this and their needs and experiences.</p> <p>As the Commission also notes, any changes in this area would need to consider the effects on existing support provided to carers and as such would require further discussion and agreement with those providing this support, including the Department for Work and Pensions. At the same time, we will continue to consider how Carer Support Payment processes and information can be improved for carers who will have only underlying entitlement in response to feedback from those with experience of the system.</p>
<p>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.</p>	<p>Noted</p>	<p>In line with the aims of Carer Support Payment we are committed to ensuring the benefit meets the needs of different carers, that carers have a positive experience of Social Security Scotland, and that we maximise carers' take up of all the support available to them. Developing robust impact assessments alongside Carer Support Payment policy and delivery is a key part of how we will achieve this.</p> <p>As the Commission notes, we were aware that a number of groups of carers were underrepresented in the evidence we had to develop the initial impact assessments and policy. We carried out targeted consultation events to address these gaps but it was not possible to tackle all of these as part of the consultation. We are therefore carrying out further work to reach more groups of carers where we have identified that there are particular issues we need to understand better or areas where further information is needed, including to strengthen links with relevant stakeholder organisations and groups, and through work across the Social Security Scotland Experience Panels, User Research, carer policy, and Social Security Scotland Client Panels.</p> <p>A Carer Benefits Client Insights Network has been launched recently where all internal stakeholders (user researchers, data analysts, social researchers, policy and agency colleagues) meet on a monthly basis to collectively understand past and present evidence, future data needs, gaps, priorities internally and externally and adjust data collection process and efforts accordingly for all carer benefits that are (or to be) delivered by Social Security Scotland. We will also continue to work with our Carer Benefits Advisory Group, who have played a key role in developing our impact assessments and policy to date, and with whom we</p>

		<p>have established an annual equalities event intended to track progress on the key issues identified in impact assessments across all our carer benefits.</p> <p>The impact assessments are necessarily living documents, which will continue to be developed in light of feedback from these internal and external engagements and data channels, and as we continue to understand more about the carers and groups of carers affected by Carer Support Payment.</p>
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