

Carer's Allowance Supplement (Scotland) Bill
Evidence to the Social Justice and Social Security Committee

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5. What level of parliamentary scrutiny do you think there should be for any future increases to the amount of Carer's Allowance Supplement?

5.1 The Bill provides a further payment of an increased Carer's Allowance Supplement ("CAS") to carers resident in Scotland in receipt of the Carer's Allowance under section 70 of the Social Security Contributions and Benefits Act 1992. The increase, which amounts to £231.40, is intended to mitigate the effects of coronavirus on unpaid carers by providing extra financial support. If the Bill is passed, the increase will be paid in December 2021. This is the second time that an increase of the CAS has been considered, the first being during the passing of the Coronavirus (Scotland) (No. 2) Act 2020. While the first extension covered the period between the 1 April 2020 and the 30 September 2020, the extension in this bill is intended to cover the period between 1 October 2021 and 31 March 2022. In addition, Scottish Ministers are given delegated powers to provide, by regulations, for a further increase of the amount to be paid for a period.

5.2 This power is provided in section 2 of the Bill, which introduces a new subsection (4C) into section 81 of the Social Security (Scotland) Act 2018 ('the 2018 Act'), which provides Scottish Ministers with powers to further increase by regulations the amount of the CAS. The power corresponds to a Henry VIII power, which enables Scottish Ministers to change primary legislation. Specifically, it allows Scottish Ministers to increase the amount of the CAS, by specifying in regulations that such an amount would be greater than the one calculated according to the statutory formula contained in section 81(4) of the 2018 Act.

5.3 The delegated powers clause is a response to delays in the implementation of a new devolved system of financial support to carers, which has delayed the repeal of the CAS due to the coronavirus crisis. Since it is unknown when the coronavirus pandemic will end, it is unclear when the government would be in the best position to introduce the replacement assistance for carers. Hence, the need for a flexible law-making tool to enable Scottish Ministers to respond to the economic needs of carers in the future. It is worth noting that section 2 of the Bill does not provide any criteria to regulate the exercise of these powers. Hence, these are broad powers that provide wide discretion to Scottish Ministers to decide whether to make further increases in the amount of the CAS, what the amount of the increase would be, and when the power to increase might commence (see section 3(2) of the Bill).

5.4 From a human rights perspective, we welcome the fact that the powers sought by Scottish Ministers only enable them to "increase", and not to "decrease", the amount of the CAS, as calculated in line with section 81(4) of the 2018 Act. We think that this limitation on the powers complies with a key international human rights obligation, namely, the obligation

to avoid “retrogressive measures” which curtail the enjoyment of social and economic rights.¹ In other words, when assessing policies in terms of their impact on social and economic rights, one criterion is that there should not be an unjustified reduction in public expenditure intended to protect social and economic rights. In addition, any reduction of people’s enjoyment of their rights should be subject to full parliamentary scrutiny, and therefore, not performed by means of regulations.

5.5 We also welcome the government’s decision to subject the exercise of these powers to the affirmative procedure, via section 2 of the Bill. This enhanced degree of parliamentary oversight is appropriate, in light of the Bill essentially providing the Scottish Government with a new set of Henry VIII powers. Nevertheless, it is worth noting that the power to decide when to commence the power to increase the CAS is subject to no parliamentary scrutiny. While the government has justified this decision on the basis of precedent,² the Scottish Parliament may want to consider whether to subject this power to the negative or affirmative procedure, to have some control over the opportunity when the powers to increase the CAS may be exercised.

6. Do you have any other views on the Bill?

6.1 We direct the committee’s attention to the limited scope of the Bill. It is estimated that less than a hundred thousand unpaid carers will benefit from this policy.³ The criteria to qualify for the Carer’s Allowance is quite stringent, requiring, among others, that care is provided for at least 35 hours a week. According to figures from Carers UK, unpaid carers in Scotland before the Covid-19 pandemic amounted to some 729,000 people, and the same institution estimates that this number may have risen by around 392,000 during the pandemic by October 2020.⁴ Most of them are not entitled to CAS and thus do not benefit from this proposal.

6.2 It is worth noting the impact that the pandemic has had on unpaid carers. Carers UK claims that “80% of carers in Scotland reported that the needs of the person they care for have increased since the COVID-19 pandemic”, which “has led to 69% of carer feeling more stressed, and 55% saying it had an impact on their health and wellbeing”, and regrettably, with “29% of carers (...) reporting struggling to make ends meet, while 10% revealed they were/had been in debt as a result of caring”.⁵ Carers UK recommended that the Scottish government acknowledge the limited scope of the CAS, and “provide additional ring fenced funding to offer dedicated funding for carers facing hardship.” We respectfully submit that the Committee ought to question the relevant Minister as to what additional funding has been made available to support unpaid carers that do not benefit from the CAS, bearing in mind especially their human rights obligations already outlined above. Moreover, we consider the Committee ought to further investigate whether and to what extent that funding meets unpaid carers’ needs, for

¹ United Nations Commission on Socio-Economic and Cultural Rights, General comment No. 3: The nature of States parties obligations (Art. 2, para. 1 of the Covenant), Fifth session (1990), para 9 available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11

² See Carer’s Allowance Supplement (Scotland) Bill’s Delegated Powers Memorandum at para 13.

³ Kidner, Camilla, SPICe Briefing, Carer’s Allowance Supplement (Scotland) Bill, p. 5.

⁴ Carers UK, Caring Behind Closed Doors: six months on, 20 October 2020, p. 28, available at: <https://www.carersuk.org/for-professionals/policy/policy-library/caring-behind-closed-doors-six-months-on>

⁵ Ibid.

how long these measures will be in place, and what consultation has been undertaken during the summer regarding the situation of unpaid carers.

About Us

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The **COVID-19 Review Observatory** is a UKRI-funded (AHRC) research initiative located at Birmingham Law School, University of Birmingham. It tracks, assesses, and engages with parliamentary reviews of responses to the COVID-19 pandemic with a view to ensuring effective consideration of rights protection, and to enhancing accountability and legitimacy by supporting parliamentary review. A key part of its work is participating in such reviews by, for example, submitting to committee inquiries.