The Scotland Act 2016 devolves Carer’s Allowance to Scotland.

This briefing provides information Carer’s Allowance including:

- entitlement rules
- expenditure and caseload
- how the definition of a carer’s benefit changed through the stages of the Scotland Bill
- how the fiscal framework might affect the amount allocated to Scotland for a carer’s benefit
- longstanding issues with Carer’s Allowance, and
- the Scottish Government’s proposals for reform.
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EXECUTIVE SUMMARY

Carer’s Allowance is the main benefit paid to people who provide substantial levels of care for a disabled relative or friend. It is also the lowest income-replacement benefit.

The Scotland Act 2016 provides for the devolution of Carer’s Allowance to Scotland, although the date for this has yet to be set. The commencement dates for the social security powers will be agreed by the Joint Ministerial Working Group on Welfare.

There are around 788,000 unpaid carers in Scotland. However, only 110,810 people in Scotland have an entitlement to Carer’s Allowance, and, of these, only 66,140 receive the benefit (as at August 2015).

To qualify for Carer’s Allowance, carers must provide ‘regular and substantial’ care which is defined as at least 35 hours a week. They must be aged 16 or over and not be ‘gainfully employed’ or in full-time education, and the person they care for must also be in receipt of a disability benefit at a certain level: Disability Living Allowance, Personal Independence Payment or Attendance Allowance.

The majority of those who do qualify for Carer’s Allowance, but do not receive it, are pensioners. This is because they are subject to the ‘overlapping benefits’ rule, which means that an individual can only receive one non-means tested benefit in full at the same time. This is true for all income-replacement benefits which compensate people for their inability to work because of unemployment, sickness, pregnancy or old age. The ability of the Scottish Government to change this rule is likely to be limited as the UK Government will continue to administer other income-replacement benefits.

The original provision for a carer’s benefit in the Scotland Bill 2015-16 sought to maintain the same conditions as for Carer’s Allowance. However, it was criticised for being too restrictive by a range of stakeholders, the Scottish Government and the Devolution (Further Powers) Committee. The Bill was amended at Report Stage by David Mundell, the Secretary of State for Scotland, removing the conditions on age, full-time study and work.

The Scottish Government plans to increase Carer’s Allowance to match the rate of Jobseeker’s Allowance. This would increase the weekly rate from £62.10 to £73.10. All the main Scottish political parties support this increase, although the Scottish Green Party would increase it further to £93.15 a week. The aim is to compensate carers for the contribution they make to society. It has been estimated that carers save Scotland £10.8bn a year.

Both caseload and expenditure on Carer’s Allowance in Scotland have increased in the last ten years. The total expenditure for 2014-15 was £203m. If the Scottish Government chooses to broaden entitlement to those who work, study and/or are under 16, this could substantially increase expenditure.

In the longer term, Scotland’s new fiscal framework, which includes the mechanism used to calculate the adjustment to the block grant, will have an impact on how the Scottish Government might fund a new benefit for carers.
INTRODUCTION

The Scotland Act 2016, section 22, devolves Carer’s Allowance to Scotland. This is the main benefit paid to people who provide substantial levels of care for a disabled relative or friend.

The Scottish Government will be able to change certain aspects of entitlement to Carer’s Allowance or even create an entirely new benefit for carers. However, some rules relating to Carer’s Allowance are linked to reserved benefits and social security regulations. Therefore, some changes could not be made without agreement from the UK Government.

This briefing considers who Scotland’s carers are, how many there are, expenditure on Carer’s Allowance, the changing definition of a carer’s benefit in the Scotland Bill, the main issues regarding Carer’s Allowance and the Scottish Government’s plans for reform.

WHO ARE SCOTLAND’S CARERS?

There are an estimated 759,000 adult ‘carers’ (aged 16 and over) in Scotland and 29,000 carers under the age of 16 (Scottish Government 2015a). These people are often referred to as ‘unpaid carers’ because they provide care to family members or friends. The people being cared for may be affected by disability, physical or mental health issues, substance misuse or frailty. Some of these conditions could be long-term and require life-long care. Some carers may need to provide substantive care for shorter periods of time.

Carers UK (2015) referred to the NHS Information Centre Survey of Carers in Households (2010), which reported on the types of care provided by carers in England:

- 82% provide practical help such as preparing meals, doing laundry or shopping
- 76% keep an eye on the person they care for
- 68% keep them company
- 62% take the person they care for out
- 49% help the person they care for with financial matters
- 47% help the person they care for deal with care services and benefits
- 38% help with aspects of personal care
- 38% provide physical help

Carers can be any age, though the likelihood of being a carer increases with age. In most age groups, women undertake more caring than men, although this changes for the over 75s. Caring can have a negative impact on the health and wellbeing of the carer, which can then have an impact on the person being cared for; for example, if the carer has a hospital admission and there is no-one to look after their relative or friend. There are also positive aspects to caring, such as bringing family members closer together and providing the carer with a sense of satisfaction (Scottish Government 2015a).

While most working age carers are in employment, there are also carers who leave employment to care for someone. Carers who leave employment are likely to be those who provide more intensive levels of caring. Whether in employment or not, carers can face financial difficulties due to higher utility bills and having to make adaptations to the family home.

Support for carers

Support for carers exists in a variety of ways and from a range of sources. Support is normally focused on improving the wellbeing or financial situation of the carer. For example, carers may receive support from family and friends as well as voluntary, private and public services e.g. in
the form of practical or financial support, respite services, or information and advice. Further information on carers in Scotland, including the range of support available, will be available in a forthcoming SPICe briefing on Carers.

The Carers (Scotland) Act 2016 aims to ensure improved and more consistent support for carers from local authorities. Prior to this, local authorities had a power to provide support to carers rather than a duty. For further information see SPICe briefing on the Carers (Scotland) Bill (Robson and Hudson 2015).

ENTITLEMENT TO CARER’S ALLOWANCE

Carer’s Allowance is the main benefit paid to people who care for someone who is severely disabled. It is paid at the weekly rate of £62.10 as at April 2016 (DWP 2015a).

It is a non-means tested benefit and does not rely on national insurance contributions. This means the amount of other income or savings a person has, or whether they have worked, does not affect the benefit. It is a taxable benefit (UK Government 2016a).

To be eligible, a person must provide ‘regular and substantial’ care for a disabled person receiving a qualifying benefit. Regular and substantial care is defined as at least 35 hours a week¹.

The qualifying benefits are:

- Disability Living Allowance (UK Government 2016b). (new claims for this benefit are only open to children under 16) – the care component at the middle rate (£55.10) or highest rate (£82.30) only;

- Personal Independence Payment (UK Government 2016c) (a benefit for people of working age 16-65) – the daily living component at either the standard (£55.10) or enhanced (£82.30) rate;

- Attendance Allowance (UK Government 2016d) (a benefit for people over 65) – at either the lower (£55.10) or higher rate (£82.30);

- Constant Attendance Allowance (UK Government 2016e)(of £67.20 or more) paid with the Industrial Injuries or War Pension schemes;

- Armed Forces Independence Payment. (UK Government 2016f) (the award amount can vary depending on the injury)

In addition, the person claiming Carer’s Allowance must:

- Be aged 16 or over – there is no upper age limit;

- Not be in full-time education – full-time education is 21 hours a week or more. When calculating these hours, only ‘supervised study’ counts, not time spent on meal breaks or unsupervised study such as reading alone. Supervised study includes study undertaken to meet the reasonable requirements of the course (CPAG 2015);

¹ Social Security (Invalid Care Allowance) Regulations 1976/409 (as amended)
• Not be ‘gainfully employed’ – a person is not eligible for Carer’s Allowance if they earn more than £110 a week. Calculations are based on net earnings;

• Be present and resident in Great Britain and not be subject to immigration control.

It is possible that a person may be entitled to Carer’s Allowance, but, due to the ‘overlapping benefit’ rule, cannot receive it. This is discussed further (see page 16).

Further information on Carer’s Allowance is available in:

• Disability Rights UK Factsheet 30 on Carer’s Allowance (Disability Rights UK 2016);

• Age UK Factsheet on Carer’s Allowance (Age UK 2016);

• Carers UK Carer’s Allowance Factsheet (Carers UK 2016a).

• House of Commons Library Carer’s Allowance (Kennedy 2016)

EXPENDITURE AND CASELOAD

Both caseload and expenditure on Carer’s Allowance have increased significantly since 2001-02.

Expenditure

Table 1 shows expenditure in England and Wales and in Scotland from 2001-02 to 2014-15 in cash terms. Total expenditure on Carer’s Allowance in Scotland for 2014-15 was £203m (UK Government 2016g). However, expenditure in Scotland on Carer’s Allowance has decreased in relative terms compared to England and Wales, reducing as a percentage of expenditure in England and Wales from 10.8% in 2001-02 to 9.6% in 2014-15.

Table 1: Expenditure on Carer’s Allowance, cash terms (£m), England and Wales and Scotland, 2001-02 to 2014-15

<table>
<thead>
<tr>
<th>Year</th>
<th>England and Wales (£m)</th>
<th>Scotland (£m)</th>
<th>Scotland as a percentage of England and Wales (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-02</td>
<td>841.2</td>
<td>90.6</td>
<td>10.8%</td>
</tr>
<tr>
<td>2002-03</td>
<td>896.8</td>
<td>96.3</td>
<td>10.7%</td>
</tr>
<tr>
<td>2003-04</td>
<td>950.7</td>
<td>102.8</td>
<td>10.8%</td>
</tr>
<tr>
<td>2004-05</td>
<td>989.5</td>
<td>106.4</td>
<td>10.8%</td>
</tr>
<tr>
<td>2005-06</td>
<td>1,038.5</td>
<td>110.4</td>
<td>10.6%</td>
</tr>
<tr>
<td>2006-07</td>
<td>1,068.8</td>
<td>112.2</td>
<td>10.5%</td>
</tr>
<tr>
<td>2007-08</td>
<td>1,159.8</td>
<td>119.6</td>
<td>10.3%</td>
</tr>
<tr>
<td>2008-09</td>
<td>1,237.4</td>
<td>125.3</td>
<td>10.1%</td>
</tr>
<tr>
<td>2009-10</td>
<td>1,359.1</td>
<td>135.5</td>
<td>10.0%</td>
</tr>
<tr>
<td>2010-11</td>
<td>1,431.0</td>
<td>140.6</td>
<td>9.8%</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,579.1</td>
<td>153.3</td>
<td>9.7%</td>
</tr>
<tr>
<td>2012-13</td>
<td>1,757.1</td>
<td>169.3</td>
<td>9.6%</td>
</tr>
<tr>
<td>2013-14</td>
<td>1,904.9</td>
<td>182.4</td>
<td>9.6%</td>
</tr>
<tr>
<td>2014-15</td>
<td>2,115.4</td>
<td>202.7</td>
<td>9.6%</td>
</tr>
</tbody>
</table>

Source: UK Government 2016g
Figure 1 compares the year-on-year increase in expenditure on Carer’s Allowance in England and Wales and in Scotland from 2001-02 to 2014-15.

Figure 1: Year-on-year change (%) in expenditure on Carer’s Allowance, cash terms, England and Wales and Scotland, 2001-02 to 2014-15

![Graph showing year-on-year change in expenditure on Carer’s Allowance in England and Wales and Scotland from 2001-02 to 2014-15.](source)

Figure 1 shows that, except in 2003-04 and 2014-15, expenditure on Carer’s Allowance increased faster in England and Wales than in Scotland between 2001-02 and 2014-15.

The change in expenditure over time is caused by changes in both Carer’s Allowance rates and in caseload.

**Carer’s Allowance rates**

Table 2 shows the standard weekly rate for Carer’s Allowance in cash terms from 2001-02 to 2016-17 and the annual percentage change.

There is a statutory framework for uprating some social security benefits, including Carer’s Allowance. This is contained in sections 150 and 150A of the Social Security Administration Act 1992.

Section 150(2) of the 1992 Act requires the Secretary of State to lay before Parliament a draft uprating order “Where it appears to the Secretary of State that the general level of prices is greater at the end of the period under review than it was at the beginning of that period”.

For Carer’s Allowance and the other benefits where the statutory requirement to uprate applies, rates were increased annually in line with the Retail Price Index (RPI) until 2011. Since then they have been uprated using the Consumer Price Index (CPI) (Kennedy et al 2013).
Table 2: Carer’s Allowance standard weekly rate, cash terms (£) and year-on-year change (%), UK, 2001-02 to 2016-17

<table>
<thead>
<tr>
<th>Year</th>
<th>Standard weekly rate (£)</th>
<th>Annual change (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-02</td>
<td>41.75</td>
<td></td>
</tr>
<tr>
<td>2002-03</td>
<td>42.45</td>
<td>1.7%</td>
</tr>
<tr>
<td>2003-04</td>
<td>43.15</td>
<td>1.6%</td>
</tr>
<tr>
<td>2004-05</td>
<td>44.35</td>
<td>2.8%</td>
</tr>
<tr>
<td>2005-06</td>
<td>45.70</td>
<td>3.0%</td>
</tr>
<tr>
<td>2006-07</td>
<td>46.95</td>
<td>2.7%</td>
</tr>
<tr>
<td>2007-08</td>
<td>48.65</td>
<td>3.6%</td>
</tr>
<tr>
<td>2008-09</td>
<td>50.55</td>
<td>3.9%</td>
</tr>
<tr>
<td>2009-10</td>
<td>53.10</td>
<td>5.0%</td>
</tr>
<tr>
<td>2010-11</td>
<td>53.90</td>
<td>1.5%</td>
</tr>
<tr>
<td>2011-12</td>
<td>55.55</td>
<td>3.1%</td>
</tr>
<tr>
<td>2012-13</td>
<td>58.45</td>
<td>5.2%</td>
</tr>
<tr>
<td>2013-14</td>
<td>59.75</td>
<td>2.2%</td>
</tr>
<tr>
<td>2014-15</td>
<td>61.35</td>
<td>2.7%</td>
</tr>
<tr>
<td>2015-16</td>
<td>62.10</td>
<td>1.2%</td>
</tr>
<tr>
<td>2016-17</td>
<td>62.10</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

Source: IFS 2014, UK Government, 2015a and 2015b

Caseload

As at August 2015, there were 110,810 people in Scotland who met the eligibility criteria for Carer’s Allowance. Of these, only 66,140 were in receipt of the benefit (UK Government 2016h). This means at that point in time, 44,670 people were eligible to receive the benefit, but did not. The most likely reason for this is the overlapping benefit rule (see page 16), which means that a person cannot receive more than one income-replacement benefit at a time. This mostly affects carers who have reached state pension age; as they cannot receive Carer’s Allowance and the State Pension at the same time.

Figure 2 shows that the majority of people aged 65 and over who qualify for Carer’s Allowance, do not receive it. However, if they are in receipt of Pension Credit, they could receive an additional amount of £34.60 per week (see page 17).
Figure 2: Number of claimants entitled to/in receipt of Carer’s Allowance in Scotland, by age, as at August 2015

Figure 3 shows the changing pattern of Carer’s Allowance caseload over 2004-05 and 2015-16. The number of people entitled to Carer’s Allowance in Scotland has increased over time. However, the number of those who have an entitlement to Carer’s Allowance, but do not receive the benefit has been reducing slightly since 2010. This could be partly due to a change in pension age for women, which was age 60 in 2010 and which has since been increased to 63 (UK Government 2013). The state pension age for women will equalise with the state pension age for men at 65 in 2018. Both women’s and men’s state pension age will increase from 65 to 66 between December 2018 and October 2020 (DWP online).
THE SCOTLAND BILL: DEFINITION OF A CARER’S BENEFIT

This section describes the initial proposal to devolve Carer’s Allowance to the Scottish Parliament, and how the definition of a carer’s benefit changed through the different stages of the Scotland Bill.

Stakeholders representing carers and disabled people expressed significant concerns regarding the initial definition of a carer’s benefit. The original definition was based on the current conditions for Carer’s Allowance, about which there have been longstanding concerns. These concerns are explored in more detail in the section ‘Issues with Carer’s Allowance’ (see page 21).

SMITH COMMISSION

The Smith Commission was announced by the Prime Minister, David Cameron, following the “no” vote in the Referendum on Scottish Independence on 18 September 2014.

The Smith Commission proposed (Para 49.1):

“Powers over the following benefits in Scotland will be devolved to the Scottish Parliament:

Benefits for carers, disabled people and those who are ill:

---

2 As at May each year (figures are provided on a quarterly basis and May is the closest to the start of the fiscal year in April, which allows for broad comparability with other tables and figures in this briefing). The table starts in 2004 as prior to that, figures did not distinguish between those receiving Carer’s Allowance and those who were only entitled to it.
Attendance Allowance, Carer’s Allowance, Disability Living Allowance (DLA), Personal Independence Payment (PIP), Industrial Injuries Disablement Allowance and Severe Disablement Allowance.” (Smith Commission 2014)

Furthermore, the Smith Commission set out the parameters by which the Scottish Parliament could design new benefits (Para 51):

“The Scottish Parliament will have complete autonomy in determining the structure and value of the benefits at paragraph 49 or any new benefits or services which might replace them. For these benefits, it would be for the Scottish Parliament whether to agree a delivery partnership with DWP or to set up separate Scottish arrangements.” (Smith Commission 2014)

And (Para 55),

“Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.” (Smith Commission 2014)

**DRAFT CLAUSES**

The UK Government set out its proposals for further powers to be devolved to the Scottish Parliament and Scottish Government in response to the Smith Commission in the Command paper *Scotland in the United Kingdom: An Enduring Settlement* (UK Government 2015c). This included the draft clauses. On a carer’s benefit the relevant draft clause was 16.4:

“Carer’s benefit” means a benefit which is normally payable in respect of the regular and substantial provision of care by a relevant carer to a disabled person; and for this purpose—

(a) “relevant carer” means a person who—

(i) is 16 or over,

(ii) is not in full-time education, and

(iii) is not gainfully employed;

(b) “disabled person” means a person to whom a disability benefit is normally payable.

The Scottish Parliament Devolution (Further Powers) Committee heard evidence on the draft clauses and published its interim report on 14 May 2015. The report included a number of recommendations including that the definition of a carer’s benefit be redrafted on the grounds that it was “overly restrictive and could limit the policy discretion of future Scottish administrations in this area” (Scottish Parliament 2015a). This recommendation was based on evidence suggesting the definition proposed in Command Paper 8990 limited the potential of designing a benefit that could support carers who wish to study or work while still managing a caring role, e.g. Enable Scotland (Scottish Parliament 2015b), Carers Scotland (Scottish Parliament 2015c), CPAG (Scottish Parliament 2015d).

The Committee was also concerned about the issue of ‘no-detriment’, as it applies to individuals. It suggested that this should be a crucial component of the discussions on the fiscal framework:
“The Committee seeks clarity on the procedures through which the commitment in paragraph 55 of the Smith report will be honoured to ensure that any new benefits or discretionary payments introduced by the Scottish Parliament will provide additional income for recipients and not be offset by reductions in entitlements to benefits, tax credits or tax relief provided by the UK Government.” (Scottish Parliament 2015a)

THE SCOTLAND BILL 2015, AS INTRODUCED

The Scotland Bill 2015, as introduced (28 May 2015), did not change the definition of a carer’s benefit. The relevant clause became Clause 19.

The Scottish Government proposed an alternative clause to change the definition of a carer’s benefit (Scottish Parliament 2015e). The alternative definition maintained the need for a carer to provide ‘regular and substantial’ provision of care to a disabled person to whom a disability benefit is normally payable. However, it removed the need for the carer to be:

- 16 or over;
- Not in full-time education;
- Not gainfully employed.

The Deputy First Minister, John Swinney, said that the reason for the new carer definition was that the Scotland Bill “import[ed] DWP’s very specific barriers in defining who is eligible for a benefit” and that he wanted to ensure that the scope of powers were in line with the Smith Commission recommendations (Scottish Parliament 2015f).

At the Committee Stage of the Bill, Ian Murray MP (Labour) put forward amendment 48 which sought to broaden the definition of a carer’s benefit by removing the restrictions on age, employment and education. This was very similar to the alternative clause put forward by the Scottish Government. The amendment received 258 Ayes and 314 Nos (UK Parliament 2015a). Therefore, the definition of a carer’s benefit was not changed.

The Secretary of State for Scotland, David Mundell MP, gave evidence to the Devolution (Further Powers) Committee on 25 June 2015 and said:

“I am absolutely clear that this committee has an on-going role in relation to the Scotland Bill. I am not appearing today to say, ‘Take it or leave it’. I am listening to the points that have been made.” (Scottish Parliament 2015g)

In response to further questions from the Devolution (Further Powers) Committee, David Mundell (Scottish Parliament 2015h) sent a letter which included the following on carer’s benefit:

“Clause 19 of the Bill allows the Scottish Parliament to decide the detail of to whom Carer’s benefits are paid, how much they are paid and what the eligibility criteria should be. The parameters around the definition of a relevant carer reflect longstanding principles about the purpose of Carer’s benefits and how people are supported in different circumstances. For example, Clause 19 picks up some of the main features of the current Carer’s Allowance in terms of the care for a disabled person being “regular and substantial” and the carer not being in full-time education, aged under 16 or in gainful employment. Taken together with existing devolved powers in areas like social care, the clause ensures the Scottish Government and Parliament will have legislative competence to set out the way in which support is provided for carers.

There are a number of considerations I would like to point out in relation to the suggestion of extending the legislative competence of the Scottish Parliament further in this area.
First, those under 16 are not normally supported by the benefit system. Rather they are supported by parents, guardians or local authorities/councils. This is a long-standing principle of the social security system.

Secondly, the current Carer’s Allowance is designed as a form of compensation for those who can do no work or only limited work because of the time they dedicate to their caring duties. Therefore, there needs to be a threshold to judge whether the claimant is in employment or not. The gainful employment provision is a means of doing so.

Thirdly, those in full-time education are not normally supported by the benefit system. Rather they are supported by the educational maintenance system through its system of loans and grants.” (Scottish Parliament 2015h)

SCOTLAND BILL 2015-16, AS AMENDED AT REPORT STAGE

Despite the views expressed in his letter to the Devolution (Further Powers) Committee, David Mundell sought to amend the definition of a carer’s benefit at report stage (9 November 2015). He said,

“Amendments 70 and 71 to clause 19 ensure that the Scottish Parliament can, if it wishes, legislate for the payment of a carer’s benefit to a person who is under 16, is in full-time education or is gainfully employed” (UK Parliament 2015b)

The amended version of the Scotland Bill was introduced in the House of Lords on 10 November 2015. Clause 20 (4) of the Bill changed the previous definition of carer’s benefit to:

“Carer’s benefit” means a benefit which is normally payable in respect of the regular and substantial provision of care by a person to a disabled person; and for this purpose ‘disabled person’ means a person to whom a disability benefit is normally payable.” (UK Parliament 2015c)

The Explanatory Notes accompanying the Scotland Bill, as introduced in the House of Lords, stated that the new definition covers Carer’s Allowance currently paid by the UK Government. It is also provides greater flexibility with the term ‘normally payable’, which is:

“designed to provide sufficient flexibility to enable provision for exceptional cases - for example it would enable provision to be made to prevent the payment of benefit in situations where a person is temporarily accommodated at public or local expense in a care home or is receiving free in-patient treatment from the NHS or to enable the payment of benefit in situations where a person is terminally ill.” (UK Parliament 2015d)

This could mean that the disabled person being cared for may not, in all circumstances, have to be in receipt of a disability benefit for their carer to receive the carer’s benefit.

Responding to the change in definition, Bruce Crawford MSP, Convener of the Devolution (Further Powers) Committee said, in a letter to the Secretary of State for Scotland, that the Committee welcomed:

“…the improved wording of the clause relating to carers and are pleased to see that you have agreed to the Committee’s call for greater flexibility to extend this allowance to people under 16 years of age and/or in full-time education” (Scottish Parliament 2015i).
The Scotland Act 2016 received Royal Assent on 23 March 2016. The definition of a carer’s benefit is at Section 22(4). The Explanatory Notes state that the definition covers Carer’s Allowance, currently paid for by the UK Government (UK Government 2016k).

The commencement dates for the social security powers will be agreed by the Joint Ministerial Working Group on Welfare. The Joint Exchequer Committee will oversee the transfers of funding (UK Government and Scottish Government 2016).

FISCAL FRAMEWORK

The Smith Commission (para 95) said that the devolution of further responsibility for taxation and public spending, including the social security powers, should be accompanied by an updated fiscal framework for Scotland, consistent with the overall UK fiscal framework.

It noted (Para 52):

“In line with the funding principles set out in paragraph 95, the initial devolution of these powers should be accompanied set out by an increase in the block grant equivalent to the existing level of Scottish expenditure by the UK Government on the benefit being devolved. In addition, any savings arising to the UK Government from no longer administering these benefits in Scotland will be transferred to the Scottish Government.” (Smith Commission 2014)


Funding for social security

Under the terms of the Fiscal Framework, the UK Government’s block grant to the Scottish Government will continue to be determined by the Barnett Formula, as proposed by the Smith Commission. In relation to welfare, and in order to reflect the fact that the Department for Work and Pensions will no longer be funding expenditure on the devolved benefits, the block grant will be adjusted upwards for welfare (and it will be adjusted downwards for tax).

The initial baseline block grant additions in relation to welfare will be equal to spending on each devolved benefit in Scotland in the year immediately prior to devolution. The Barnett Formula will be applied to determine block grant adjustments annually from the year each benefit is devolved. The comparability factor for each devolved benefit will be 100%. This means the addition to the block grant will be equal to a population share of changes in aggregate spending on the comparable benefits in the rest of Great Britain. However, for a transitional period covering the next Scottish Parliament (up to and including 2021-22, at which point this will be reviewed), another formula will be used in practice to determine the block grant adjustment: the Indexed Per Capita (IPC) method. This will ensure that the Scottish Government’s overall level of funding will not be affected if Scotland’s population grows differently from the rest of the UK (UK Government 2016k).

Concerning the use of the Barnett Formula, David Bell, David Eiser and David Phillips noted:

3 Except for Cold Weather Payment as these are subject to significant volatility from one year to the next so the initial baseline addition will be an average of the UK Government’s spending in Scotland on this benefit from 2008-09 to the year prior to devolution.
“As is now well known, a property of the Barnett Formula is that it results in convergence in per capita spending over time between Scotland and rUK, regardless of need. This means that use of the Barnett formula to determine the funding for the devolved welfare benefits would tend to bring per capita spending in Scotland on these benefits closer to the UK level than at present unless resources are found elsewhere in the Scottish budget. Of course, as is more generally the case with the Barnett Formula, the rate of convergence is reduced if Scotland’s population grows relatively more slowly than rUK’s.” (Scottish Parliament 2016a)

**No-detriment**

The Smith Commission stated that there should be ‘no-detriment’ as a result of UK Government or Scottish Government policy decisions post-devolution. Where either government makes a policy decision that affects expenditure or tax receipts of the other, the decision-making government will have to reimburse the other if there is an additional cost, or will receive a transfer if there is a saving.

Bell, Eiser and Philips have argued:

“It is impossible to design a block grant adjustment system that satisfies the spirit of the ‘no detriment from the decision to devolve’ principle at the same time as fully achieving the ‘taxpayer fairness’ principle: at least while the Barnett formula remains in place.” (Scottish Parliament 2016)

The Fiscal Framework describes the financial consequences of policy decisions as “policy spillover effects” (UK Government 2016k). These are split into direct effects and behavioural effects. Direct effects will directly and mechanically exist as a result of a policy change. The UK Government and Scottish Government have agreed to account for all direct effects. Behavioural effects however will only be taken into account if they involve a “material and demonstrable welfare cost or saving (…) where these are in exceptional circumstances” (UK Government 2016k). Further, “Assessment of causality and of the scale of any financial impacts of direct and behavioural effects will be based on and supported by a “shared understanding” of the evidence” (UK Government 2016k).

**Additional income**

As noted earlier, the Smith Commission said that any new benefits or discretionary payments must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment. The Fiscal Framework added (Para 89):

“Any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed taxable such as Carer’s Allowance.” (UK Government 2016k)

Taxable benefits also include Jobseeker’s Allowance, Statutory Maternity Pay, and Bereavement Allowance (UK Government 2016a). Carer’s Allowance will still count as income in relation to means-tested benefits. However, any increase to the award will not count as income. This will ensure that all recipients of Carer’s Allowance will benefit from the increase in award. This resolves an issue that the Devolution (Further Powers) Committee were concerned about (see page 11-12).
In addition, the Fiscal Framework highlights that the Benefit Cap will be adjusted to accommodate any additional benefit payments introduced by the Scottish Government (UK Government 2016k).

If the Scottish Government wishes to provide additional income by increasing awards, topping up benefits or creating new benefits, it will need to fund this itself.

**ISSUES WITH CARER’S ALLOWANCE**

Since the Smith Commission proposed the devolution of Carer’s Allowance, a number of stakeholders have raised concerns about the current status of the benefit. Evidence of this can be seen through many of the written responses to the Welfare Reform Committee’s inquiry (Scottish Parliament 2015k) on the Future Delivery of Social Security in Scotland (Scottish Parliament 2015l). There have also been a range of suggestions made on how the benefit could be improved.

Many of the issues raised by stakeholders echo the concerns that were previously raised by the House of Commons Work and Pensions Committee.

**OVERLAPPING BENEFIT RULE AND CARERS**

The overlapping benefit rule means that a person cannot be paid more than one non-means tested benefit in full at the same time (CPAG 2015). This is true for income-replacement benefits which compensate people for their inability to work because of unemployment, sickness, pregnancy or old age (CPAG 2015).

It is possible that a person may be entitled to Carer’s Allowance, but due to the overlapping benefit rule they cannot receive it. If a person receives less than the basic rate of Carer’s Allowance from another income-replacement benefit, that benefit is topped up to the amount they would receive from Carer’s Allowance (Disability Rights UK 2015). The following income-replacement benefits are subject to this rule:

- **Contributory benefits:**
  - Contribution based Jobseekers Allowance;
  - Incapacity Benefit;
  - Contributory Employment and Support Allowance;
  - Maternity Allowance;
  - Retirement Pension;
  - Bereavement Allowance or Widow’s Pension;
  - Widowed Parent’s Allowance or Widowed Mother’s Allowance.

- **Non-contributory benefits:**
  - Carer’s Allowance;
  - Severe Disablement Allowance.
Anyone who has an entitlement to Carer’s Allowance, but is in receipt of another means-tested benefit, could be entitled to an additional £34.60 a week. The description of this additional amount is dependent on the benefits they receive:

- **Carer Premium** – for those in receipt of means-tested benefits, such as Income Support, income-based JSA, income-related ESA;
- **Carer addition** – for those in receipt of Pension Credit ([UK Government 2015d](#));
- **Carer element** – for those in receipt of Universal Credit

In the Command Paper *Scotland in the United Kingdom: an enduring settlement* ([UK Government 2015c](#)), the UK Government said that further consideration would need to be given to a number of practical aspects of devolving social security. This included the overlapping benefits rule (para 4.1.7):

“Overlapping rules which, to avoid duplication of state or local provision for a similar purpose, cause entitlement to certain payments or the provision of certain services to cease or be reduced where they overlap with receipt of another similar payment or service.” ([UK Government 2015c](#))

The overlapping benefit rule affects a significant number of older people who are in receipt of the state pension (about 36,000, see Table 3).

In their responses to the Scottish Parliament’s Welfare Reform Committee’s inquiry, Age Scotland, Alzheimer Scotland, Carers Scotland and the Carers Trust, highlighted the difficulty created by the overlapping benefit rule for pensioners. Carers Scotland asked:

“…would the Scottish Government be able to change this status and if so, how would this affect interactions between devolved and reserved benefits, and the amount of benefit carers receive?” ([Scottish Parliament 2015m](#))

The Work and Pensions Committee ([UK Parliament 2008](#)) had previously said that the overlapping benefit rule was confusing and over-complicated and made a number of recommendations aiming to overcome the complexities. The then UK Labour Government responded that simplicity and ease of application should be a guiding principle in the design of any changes to the benefit system, “an important principle underlying the proposed move towards a single benefit” ([UK Government 2008](#)). The Labour Government had considered replacing working age benefits with a single benefit ([Kennedy and Morgan 2009](#)).

The Welfare Reform Committee referred to the stages of transition for benefits. For example, when disabled children become eligible for adult disability benefits, or when older carers start receiving their pension and are then subject to the overlapping benefit rule. The Committee recommended that the Scottish Government make “provision within a Scottish social security system to better support people and their carers during points of transition in their lives” ([Scottish Parliament 2015l](#)).

In response, the Scottish Government said that it would seek to “align a benefit for carers with the support that Local Authorities will have to provide to carers under the terms of the Carers (Scotland) Bill” ([Scottish Government 2016b](#)).
The Scottish Government has also said that its ability to amend the overlapping benefits rule is likely to be limited as the UK will continue to administer other income-replacement benefits (Scottish Government 2016c).

**INTERACTION WITH OTHER BENEFITS**

As well as the overlapping benefits rule, there are several other ways that Carer’s Allowance interacts with other benefits. These will need to be considered if a new carers’ benefit is proposed by the Scottish Government.

In written evidence to the Welfare Reform Committee, Age Scotland said:

> “Carers’ Allowance is also the only income-replacement benefit which is proposed to be devolved, and so it has a more complex relationship with other benefits which are being reserved than the others being discussed; this should be considered during scrutiny of the Scotland Bill so that everyone is clear how a change to CA would impact on and be affected by reserved benefits like Pension Credit.” Scottish Parliament (2015n)

**Replacement of Disability Living Allowance with Personal Independence Payment**

Entitlement to Carer’s Allowance requires the person being cared for to be in receipt of Attendance Allowance, Disability Living Allowance (DLA) or Personal Independence Payment (PIP) at certain rates. PIP is replacing DLA for people of working age, all of whom should have been contacted by September 2017 (UK Government 2015e). The UK Government aims to target PIP to individuals whose health condition or impairment has the greatest impact on their daily life, while reducing the caseload and expenditure. In 2010, the aim was to reduce caseload and expenditure by 20% with savings of £1.5bn a year by 2016-17. Revised estimates in 2012 suggested that by 2018, around 607,000 fewer people would receive PIP than would have received DLA, a 28% reduction in caseload (Kennedy et al 2016). This means a disabled person’s entitlement to a disability benefit could change and that their carer would no longer be entitled to Carer’s Allowance. This impact was acknowledged by the Welfare Reform Committee (Scottish Parliament 2015k).

However, the Office for Budget Responsibility has estimated that savings from PIP will be considerably lower than expected, due to:

- the probability of a DLA claim going through the managed reassessment process being successful for the claimant, revised up from 74% to 83%
- average awards revised up by 16% to £100 a week (from £83 a week)

The OBR explained:

> “our December 2012 forecast incorporated an assumed saving of £3.0 billion by 2017-18 from the introduction of PIP. If that costing had factored in the success rates and average awards assumed in this forecast, the saving would have been almost 90 per cent lower at £0.4 billion. This implies that the original 20 per cent saving sought by the Government looks more like 5 per cent in our pre-measures forecast” (OBR 2016).
Severe disability premium

A person in receipt of a disability benefit may lose entitlement to the severe disability premium if their carer claims Carer’s Allowance. The premium is included in the disabled person’s ‘applicable amount’ for means-tested benefits, or the equivalent amount used in Pension Credit. As a result, it is not always advisable for a carer to claim Carer’s Allowance (Disability Rights UK 2015).

In their written evidence to the Welfare Reform Committee, Enable Scotland commented:

“Many disabled people receive an additional element in their means tested benefits that recognises that they do not have anyone in receipt of Carers Allowance for them (the severe disability premium) and any changes which open up access to Carers Allowance may have significant implications for this group of claimant. It will be crucially important that all of the implications of any changes made to this benefit are considered.” (Scottish Parliament (Scottish Parliament 2015o)

Carer’s Allowance counted as income

When a person claims a means-tested benefit, i.e. income support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Housing Benefit and Universal Credit, the amount received will depend on how much income they have. This includes income from earnings, but also a range of benefits and tax credits. As noted earlier in this briefing Carer’s Allowance is one of the benefits counted as income, which means it is counted in full when calculating someone’s Income Support, for example.

During its scrutiny of the Scotland Bill 2015, the Devolution (Further Powers) Committee questioned what the impact might be if Carer’s Allowance is increased (Scottish Parliament 2015a). The Committee felt that this conflicted with the Smith Commission principle of ‘no-detriment’ at the individual level and referenced paragraph 55:

“Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment”. (Smith Commission 2014)

In its interim report on the Scotland Bill, the Committee said that it:

“…recognises that the fiscal framework is currently the subject of discussion between the Scottish and UK Government. The Committee considers that the issue of ‘no detriment’ as it applies to individuals, particularly those in receipt of benefits, should be a crucial component of these discussions. The Committee seeks clarity on the procedures through which the commitment in paragraph 55 of the Smith report will be honoured to ensure that any new benefits or discretionary payments introduced by the Scottish Parliament will provide additional income for recipients and not be offset by reductions in entitlements to benefits, tax credits or tax relief provided by the UK Government.” (Scottish Parliament 2015a)

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4 Applicable amounts are used to help calculate the amount of benefit a person is entitled to. They are made up of all the relevant personal allowances and any other premiums that would be payable.

5 It is worth noting that the severe disability premium will not be available under Universal Credit. See: Holes in the safety net: the impact of Universal Credit on disabled people and their families (Disability Rights UK, Children’s Rights, and Citizens Advice Service 2012).

6 This is a general rule, but there could be specific income disregards in place, depending on individual circumstances.
The Deputy First Minister, John Swinney, wrote to the Devolution Committee and said that the intention of paragraph 55 was to:

“…provide a guarantee that the benefit of anything we do in the Scottish Parliament should not be undermined or negated in any way as it affects the individual. This is certainly my interpretation and I expect this to be honoured in full by the UK Government. You will understand however that, as with all these things, the detail and negotiations are still to take place with the UK Government. I expect this to be a matter to be discussed at the Joint Ministerial Welfare Group…” (Scottish Parliament 2015p)

In November 2015, the Secretary of State for Scotland, David Mundell, said that the UK Government supported the position set out in paragraph 55, and that had not changed.

As mentioned earlier, with regard to the Fiscal Framework, Carer’s Allowance will continue to count as income in relation to reserved means-tested benefits. However, any increase in the award will not be counted as income.

**AMOUNT OF CARER’S ALLOWANCE**

Carer’s Allowance is currently paid at the weekly rate of £62.10. It is the lowest award of all income-replacements benefits. The Work and Pensions Committee previously recommended that the benefit should be radically overhauled “to recognise the contribution carers make” (UK Parliament 2008).

**Increasing the amount**

The Expert Working Group on Welfare described the level of award for Carer’s Allowance as an “unacceptable anomaly” and recommended that the weekly rate be increased to the same level as the award for Jobseekers Allowance for those aged 25 and over, which at the time of the report was £72.40 a week (Scottish Government 2014). The Group said that, at the time of the report, the Scottish Government had estimated that this would cost approximately an additional £32.9m per annum. No detail was provided on how this figure was calculated.

The low rate of Carer’s Allowance was also discussed in the written submissions to the Welfare Reform Committee (Scottish Parliament 2015k), for example, Carer’s Scotland and Alzheimer Scotland.

The Scottish Government announced on 5 November 2015 that it plans to increase the rate of Carer’s Allowance to match that of Jobseekers Allowance for the over 25s (Scottish Government 2015b).

**A two-tier carer’s benefit**

In August 2008 the Committee published a report, Valuing and Supporting Carers (UK Parliament 2008), which looked in detail at support for carers. In particular, the Committee recommended that there should be a two tier carer’s benefit:

“… guided by the principles that carers who are not able to work due to their caring responsibilities should be entitled to income replacement benefit comparable to other income replacement benefits; and that an additional payment should recognise the additional costs of caring for one or more people.” (UK Parliament 2008)

The Committee suggested the benefit could operate as follows:
- Carer Support Allowance – to have the same rules as the existing Carer’s Allowance, but paid at the same rate as Jobseekers Allowance;

- Caring Costs Payment – available to all carers who meet the criteria for Carer’s Allowance, but is also payable to those over State Pension age. (UK Parliament 2008)

The Work and Pensions Committee requested that the DWP cost the proposals. In its response to the report, the then Labour Government accepted the general principle of a two tier carer’s benefit (UK Government 2008). However, the UK Government said it would consider carer’s benefits in the context of wider welfare reform and gave no timetable for this. No further announcements were made before the 2010 General Election (Kennedy 2016).

The Child Poverty Action Group (CPAG) in Scotland also proposed a two tier benefit for carers in response to the Welfare Reform Committee’s inquiry (Scottish Parliament 2015q). This was similar to the proposals made by the Work and Pensions Committee, but with some differences:

- The first tier would be a universal benefit paid to all those caring full time, regardless of the hours worked, level of education or earnings;

- The second tier would be payable to those on the lowest earnings. This would be an income-replacement benefit, and therefore subject to the overlapping benefits rule. (Scottish Parliament 2015q)

CPAG said that:

“Such an arrangement would represent an important recognition of the value of the role carried out by all carers and the additional costs they face, whilst also helping to ensure that carers not in employment have sufficient resources to continue fulfilling that vital role.” (Scottish Parliament 2015q)

The Welfare Reform Committee said it would encourage the Scottish Government to consider the need for a benefit that covers the additional costs of caring, as well as providing an income-replacement benefit (Scottish Parliament 2015i).

In response, the Scottish Government said that it had committed to starting to increase benefits for carers to the same level as Jobseekers Allowance, and that they are “committed to considering social security for carers as part of our overall approach to carer support” (Scottish Government 2016b).

**PAID WORK, STUDY AND YOUNGER CARERS**

As explained earlier (see page 13) the definition of a carer’s benefit was amended during the passage of the Scotland Bill to provide flexibility for the Scottish Parliament to change the legal definition of a carer, for the purposes of paying a benefit.

The following paragraphs briefly cover the longstanding concerns about restrictions for carers who are under 16, students, and those who would like to work. These will be relevant considerations for the Scottish Government, as once the powers are devolved, it will be able to redesign Carer’s Allowance.

The Scottish Government has established a Carer Benefit Advisory Group, which includes carer organisations, to help develop a definition of ‘carer’ for the purposes of paying benefits to carers, and which integrates with the wider benefits system (Scottish Government 2016d).
Carer's Allowance and paid work

A carer can be eligible for Carer's Allowance even if they work, as long as they do not earn more than £110 (net) a week.

The Work and Pensions Committee said that the earnings limit makes it “almost impossible” for carers to combine paid work with their caring responsibilities (UK Parliament 2008). A carer will lose their entitlement to Carer's Allowance entirely as soon as they earn more than the earnings limit. The Work and Pensions Committee recommended that the DWP examine the costs and benefits of increasing the earnings limit and introduce a taper, where Carer's Allowance would be reduced the more a person earned (UK Parliament 2008). In response, the then Labour Government said that it would keep the earnings limit under review, but that introducing an income taper “would make the benefit considerably more complex to administer and much more difficult for carers to understand” (UK Government 2008).

When the Scotland Bill 2015 was introduced, the definition of a carer’s benefit included the criterion that recipients would not be ‘gainfully employed’. This is similar to the rule with Carer’s Allowance where regulations refer to the weekly earnings limit. The Devolution (Further Powers) Committee said that the definition was overly restrictive and would limit what the Scottish Government could do (Scottish Parliament 2015a).

Carers Scotland explained in their submissions to the Devolution (Further Powers) Committee, why there needs to be a consideration of the earnings limit.

“This limit is very low and every year many carers lose complete entitlement to Carers Allowance when the minimum wage rises, even when their earnings are merely a few pence above the earnings limit.

We question whether the restrictive nature of the clauses will prevent the Scottish Government from removing this “cliff edge” or increasing the earnings limit in line with, for example, the Living Wage rather than the minimum wage. We continue to seek clarification.” (Scottish Parliament 2015c)

The reference to the National Minimum Wage (NMW) by Carers Scotland relates to a concern that increases in the NMW pushes carers above the earnings limit of Carer’s Allowance. Kennedy said that until a few years ago, this was an annual occurrence:

“The NMW usually increases from October, and there is no mechanism for automatically adjusting the Carer’s Allowance earnings limit to take this into account. The problem was alleviated somewhat from 1 October 2007 – when the earnings limit was increased from £87 to £95 a week, and again from 12 April 2010 – when it was increased to £100 a week.” (Kennedy 2016)

The Work and Pensions Committee had recommended the DWP look at ways of synchronising the increases in the level of Carer’s Allowance earnings limit, with increases in the NMW (UK Parliament 2008). The Labour Government did not respond specifically to this point, but said it would look systematically at the support offered to carers through the benefits system (UK Government 2008).

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7 Regulation 8 of the Social Security (Invalid Care Allowance) Regulations 1976 (as amended)
Over the past ten years, the earnings limit has been increased as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Earnings Limit</th>
</tr>
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<tbody>
<tr>
<td>April 2004 – April 2005</td>
<td>£79</td>
</tr>
<tr>
<td>April 2005 – April 2006</td>
<td>£82</td>
</tr>
<tr>
<td>April 2006 – April 2007</td>
<td>£84</td>
</tr>
<tr>
<td>April 2007 – September 2007</td>
<td>£87</td>
</tr>
<tr>
<td>October 2007 – April 2010</td>
<td>£95</td>
</tr>
<tr>
<td>April 2010 – May 2014</td>
<td>£100</td>
</tr>
<tr>
<td>May 2014 – May 2015</td>
<td>£102</td>
</tr>
<tr>
<td>May 2015 to date</td>
<td>£110</td>
</tr>
</tbody>
</table>

Source: See [Appendix 1 of Chapter 60 of the DWP Decision Maker’s Guide](#) for changes to the ICA/A earnings limit since 1976

**Carer’s Allowance and Studying**

As with a number of social security benefits, Carer’s Allowance is not available to students in full-time education. The definition of full-time study is 21 hours a week or more.

The '21 hour study rule’ is another issue which the Work and Pensions Committee previously reported on:

“Carers currently face a stark choice between engaging in education and training without any financial support or living on benefits. Many carers would be able to undertake education or training in addition to providing in excess of 35 hours of care per week.” (UK Parliament 2008)

The Committee said that the rule was criticised by many organisations because it creates a barrier for carers who want to update their skills with a view to entering or re-entering the labour market. The Committee recommended that the DWP consider removing the 21 hour rule. In response, the Labour Government said it would not be making piecemeal changes to Carer’s Allowance, but would look at support for carers through the benefits system as part of its development of a single working age benefit (UK Government 2008).

Carers Trust Scotland (Scottish Parliament 2015r), in its submission to the Welfare Reform Committee, said that the 21 hour study rule forces carers to make a choice between education and caring. CPAG said, in their submission to the Devolution (Further Powers) Committee, that the restriction on studying (and work) needs to be addressed so that a benefit can be created which is responsive to the changing circumstances of disabled people and carers, and minimise barriers to progression through education or work (Scottish Parliament 2015q).
**Carer’s Allowance and young people**

Carer’s Allowance is not available to carers under the age of 16. According to Scotland’s Census 2011, there were 1,328 people aged 15 and under who provide more than 35 hours of unpaid care a week.⁶

None of the submissions to the Welfare Reform Committee or the Devolution (Further Powers) Committee called for the carer’s benefit to be available to carers under the age of 16 (Scottish Parliament 2015k). However, there was a general view from stakeholders that the minimum age requirement was restrictive.

The Scottish Green’s Manifesto (2016) made a commitment to explore the introduction of a Young Carers’ Grant. During the First Minister’s statement on Taking Scotland Forward, made in the Parliament on 25 May 2016, the First Minister announced that the Scottish Government would also consider the introduction of a Young Carers’ Allowance to provide extra support for young people with significant caring responsibilities (Scottish Parliament 2016).

**BENEFIT CAP**

The benefit cap is part of the UK Government’s welfare reforms and applies to certain benefits. It currently limits household benefits at:

- £26,000 per year for a family;
- £18,200 per year for a single person without children. (UK Government 2016m)

The annual limit will be lowered via the Welfare Reform and Work Act 2016:

- £20,000 per year for a family, except those in London where it will be £23,000;
- £13,400 per year for a single person without children, except those in London where it will be £15,410.

The new thresholds are expected to begin in Autumn 2016, with full roll-out in 2017 (Wilson 2016).

Carer’s Allowance is one of the benefits included in the benefit cap. The Smith Commission proposed that the benefit cap be adjusted to accommodate any additional payment that the Scottish Parliament provides. This position was confirmed in The agreement between the Scottish government and the United Kingdom government on the Scottish government’s fiscal framework (UK Government 2016k).

However, the UK Government has since announced that Carer’s Allowance will no longer be subject to the benefit cap. This followed a landmark ruling from the High Court. Justice Collins ruled that the Government was unlawfully discriminating against disabled people and their carers (Carers UK 2016b).

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⁶ Scotland’s Census - Table DC3103SC - Provision of unpaid care by sex by age
At the Third Reading of the then Welfare Reform and Work Bill 2015, Lord Freud said he was introducing:

“…an exemption from the benefit cap for all households where a member receives carer’s allowance or guardian’s allowance. We will bring forward regulations to give effect to these exemptions later this year. The exemption will mean that households where someone receives carer’s allowance or guardian’s allowance will be exempt from the cap. For carer’s allowance, this means that the claimant’s household will be exempt from the effect of the cap regardless of whether the cared-for person is part of that household or not” (UK Parliament 2016).

OTHER ISSUES

A range of other issues were raised in the written submissions to the Welfare Reform Committee’s inquiry regarding Carer’s Allowance.

Qualifying hours

Section 70 of the Social Security Benefits and Contributions Act 1992 lists the criteria for entitlement to Carer’s Allowance. This includes the requirement to provide ‘regular and substantial’ care, defined as 35 hours or more a week under the Social Security (Invalid Care Allowance) Regulations 1976/409 (as amended).

The Regulations also stipulate that the 35 hours of care only apply to caring for one person:

“A person who is caring for two or more severely disabled persons in a week shall be treated as engaged and regularly and substantially engaged in caring for a severely disabled person only where he is engaged and regularly engaged for at least 35 hours in that week in caring for any one severely disabled person, considered without reference to any other severely disabled person for whom he is caring” (Regulation 4).

However, the Carers Trust said:

“There are many circumstances where carers are caring for two or more disabled people but can only receive one payment of Carers Allowance. Caring for more than one person becomes more expensive, and carers who are looking after more than one person are less likely to be able to work outside of their caring role.” (Scottish Parliament 2015r)

It was also suggested by Carers Scotland, South Lanarkshire Council and NHS Lanarkshire that two carers who care for the same person on a 24 hour basis could each receive a carer’s benefit (Scottish Parliament 2015k).

The definition of a carer’s benefit was amended in the Scotland Bill to remove the restrictions on age, employment and studying. However, the requirement to provide ‘regular and substantial’ care remains which is currently defined for the purposes of Carer’s Allowance as 35 hours a week or more under regulations. The Scotland Act 2016 does not provide an interpretation for “regular and substantial”, so any new legislation for a carer’s benefit would have to set out what it meant in the context of that legislation.

The Welfare Reform Committee heard evidence that the requirement to provide 35 hours of care a week to be eligible for Carer’s Allowance is too high and does not take fluctuating

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9 Social Security (Invalid Care Allowance) Regulations 1976/409 (as amended)
conditions into account. The Committee recommended that the Scottish Government take this factor into consideration when designing a new carer’s benefit (Scottish Parliament 2015i).

**Qualifying benefit**

Carer’s Allowance is only available to people if the person they provide care for is in receipt of DLA, PIP, AA, AFIP or Constant Attendance Allowance. This was highlighted as an issue by Action for ME, Alzheimer Scotland and Carers Scotland:

> “in cases where the cared-for person may not be entitled or may choose not to claim a qualifying benefit, the carer is left without monetary support, even if they otherwise meet the eligibility criteria.” (Scottish Parliament 2015s)

The Welfare Reform Committee highlighted this issue in relation to people of working age, currently in receipt of DLA, but who may lose entitlement to a disability benefit when they are reassessed for PIP. The Committee said that it is:

> “…aware that although people may no longer be receiving a disability benefit, they may still have substantial care needs. We would encourage the Scottish Government to consider this continued need closely and include carers and their representative organisations in any deliberations on this topic” (Scottish Parliament 2015i).

**Terminal illness**

There is a ‘fast-track’ process that allows terminally ill patients to obtain Disability Living Allowance, Personal Independence Payment or Attendance Allowance two weeks after applying, and without having to go through a face to face assessment. The fast track process is not available to carers:

> “At present there is no mechanism for the Carer’s Allowance to be fast tracked. We believe that the Scottish Government should look to enable those caring for someone living with a terminal illness to have their Carer’s Allowance fast tracked under similar special rules, as those set out for people with a terminal illness claiming PIP/Attendance Allowance” (Scottish Parliament 2015t).

The Welfare Reform Committee recommended that the Scottish Government should consider a fast track process to allow quick access to benefits for carers when they are caring for someone who is terminally ill (Scottish parliament 2015i).

In response the Scottish Government said:

> “The application process for carers will be considered as we put in place our new arrangements. This is an issue that we will consider. Treating applicants with dignity and respect is one of our key aims. This would apply in all cases, but especially when a claimant is caring for someone who has a terminal illness.” (Scottish Government 2016b)
This section highlights what the Scottish Government has said to date about plans for a carer’s benefit.

**INCREASE THE AWARD**

The Scottish Government intends to increase the award for Carer’s Allowance, currently £62.10 a week, to the same rate as Jobseekers Allowance for the 25 and overs – currently £73.10 a week.

“When this Government gets the power to do so, we will begin to increase Carer’s Allowance so that it is paid at the same level as jobseeker’s allowance which would give carers about £600 more a year.” (5 November 2015)

This increase has been supported by the Scottish Labour Party (2016), Scottish Conservatives (2015) and the Scottish Liberal Democrats (2016). The Scottish Greens (2016) proposed an increase of 50%, which would mean weekly payments of Carer’s Allowance rising to £93.15.

The aim of increasing Carer’s Allowance is to recognise the contribution that carers make to Scottish society (Scottish Government 2015b). Research commissioned by Carers UK estimates that unpaid care saves Scotland £10.8 billion a year10 (Buckner and Yeandle 2015).

**Impact of increasing Carer’s Allowance**

This section considers who might qualify for the increase in Carer’s Allowance and the impact on expenditure. It also takes into account the possibility of a larger caseload if entitlement is widened, and the impact this would have on expenditure.

**Who will receive the increase?**

Currently, 110,810 people have an entitlement to Carer’s Allowance. Table 3 provides a breakdown by age group. If the current rules on overlapping benefits remain, then only 66,140 carers will receive the increased award. There are 36,850 people aged 65 and over who have an entitlement to Carer’s Allowance. Of these, only 960 are receiving the benefit. Unless an agreement can be reached on the overlapping benefits rule, or there is an alternative method of providing an award to carers of state pension age, the proposed increase of Carer’s Allowance will have no benefit for this group.

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10 This calculation is based on a replacement cost of £18 per hour.
Table 3: Carer's Allowance recipients in Scotland, as at August 2015

<table>
<thead>
<tr>
<th>Age group</th>
<th>Meet the eligibility criteria</th>
<th>Eligible but not receiving Carer's Allowance</th>
<th>Claimant receiving benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>280</td>
<td>30</td>
<td>250</td>
</tr>
<tr>
<td>Working age 18-64</td>
<td>73,680</td>
<td>8,740</td>
<td>64,950</td>
</tr>
<tr>
<td>65 and over</td>
<td>36,850</td>
<td>35,890</td>
<td>960</td>
</tr>
<tr>
<td>Total</td>
<td>110,810</td>
<td>44,670</td>
<td>66,140</td>
</tr>
</tbody>
</table>

Source: UK Government 2016

New caseload

The provisions in the Scotland Act 2016, unlike the regulations governing Carer's Allowance, provide the flexibility to change the legal definition of a carer for the purposes of paying a benefit and could be used to allow a carer’s benefit to be paid to carers who work, study full-time, or are under the age of 16. The provisions also say that a carer’s benefit must relate to care for a disabled person who normally receives a disability benefit. This is similar to Carer’s Allowance which requires the person being cared for to receive a qualifying disability benefit. For now it is unclear whether the rule requiring a person to care for someone for 35 hours or more a week will be changed.

This section considers what the new caseload might be, if the limits on work, study and age are removed, but where the requirement to provide 35 hours or more of care per week are retained. For these calculations, it is assumed that anyone requiring 35 hours or more of care per week would be in receipt of a qualifying benefit.

A report on Scotland’s Carers in 2015 brought together statistical analysis and research on caring, particularly from Scotland’s Census 2011 and the Scottish Health Survey (SHS) for 2012/13 (Scottish Government 2015a).

The report states that Scotland’s Census 2011 is thought to underestimate the extent of low level caring, but provides a good estimate of people with substantial caring responsibilities. It shows that 11% of the adult population are carers, and that over 171,000 people aged 16 and above said they provided 35 hours or more of care a week. Looking at the Census 2011 results, it is possible to look across all age groups that provide 35 hours or more of care per week (see Table 4). This would add about 60,000 more carers to those currently entitled to Carer’s Allowance.

Table 4: Number of people in Scotland who provide 35 hours or more of care per week

<table>
<thead>
<tr>
<th>Age</th>
<th>People who provide 35 hours or more of care = ‘regular and substantial’ care</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 15</td>
<td>1,328</td>
</tr>
<tr>
<td>16 to 24</td>
<td>7,000</td>
</tr>
<tr>
<td>25 to 34</td>
<td>14,211</td>
</tr>
<tr>
<td>35 to 49</td>
<td>46,786</td>
</tr>
<tr>
<td>50 to 64</td>
<td>52,854</td>
</tr>
<tr>
<td>65 and over</td>
<td>50,404</td>
</tr>
<tr>
<td>Total</td>
<td>172,583</td>
</tr>
</tbody>
</table>

Source: Scotland’s Census 2011, Table DC3103SC
Potential expenditure

Table 5 explores different scenarios for potential expenditure. It considers removing current limitations on Carer’s Allowance, as well as what might happen if the overlapping benefit rule no longer applies. The first part of the table (scenarios A-C) considers what an increased caseload would mean, based on the current rate of Carer’s Allowance at £62.10 a week.

The second part of the table (scenarios D-G) considers scenarios based on the new rate proposed for Carer’s Allowance - £73.10 a week. Scenario D is closest to what the Scottish Government has proposed; as a minimum it would increase expenditure by £38m, from £213m to £251m. If the Scottish Government were to increase entitlement to all those who provide more than 35 hours of care a week, irrespective of work, study or age, and the overlapping benefit rule is removed, then this could increase expenditure to £656m, an increase of £443m (scenario G).

If the Scottish Green Party’s proposal to increase the award to £93.15 a week is supported, and existing rules are maintained, this would increase expenditure to £320m, an increase of £107m (scenario H).

Table 5: Illustrative scenarios and increase in expenditure on a carer’s benefit

<table>
<thead>
<tr>
<th>Scenarios at current rate - If the Scottish Government:</th>
<th>Caseload</th>
<th>Calculation</th>
<th>Estimated annual expenditure, £m</th>
<th>Implied additional annual expenditure, £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>A keep existing rules, but the UK Government removes the overlapping benefit rule</td>
<td>all currently entitled to CA 110,810</td>
<td>Current rate (62.1) x 52 weeks x caseload</td>
<td>358</td>
<td>145</td>
</tr>
<tr>
<td>B remove all limitations on people who work, study or are under 16, but the overlapping benefit rule applies</td>
<td>all who provide 35 hours of care, according to the Census 2011, minus pensioners (65 and overs) 122,319</td>
<td>Caseload= 172,583-50,264 Current rate (62.1) x 52 weeks x caseload</td>
<td>395</td>
<td>182</td>
</tr>
<tr>
<td>C remove all limitations on people who work, study or are under 16, but the UK Government removes the overlapping benefit rule</td>
<td>all who provide 35 hours of care, according to the Census 2011 172,583</td>
<td>Current rate (62.1) x 52 weeks x caseload</td>
<td>557</td>
<td>344</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenarios at new rate - If the Scottish Government:</th>
<th>Caseload</th>
<th>Calculation</th>
<th>Estimated annual expenditure, £m</th>
<th>Implied additional annual expenditure, £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>D keep all existing rules, but increase the rate</td>
<td>For all those currently receiving CA 66,140</td>
<td>New rate (73.1) x 52 weeks x caseload</td>
<td>251</td>
<td>38</td>
</tr>
<tr>
<td>E keep existing rules, but the UK</td>
<td>For all currently entitled to 110,810</td>
<td>New rate (73.1) x 52 weeks x caseload</td>
<td>421</td>
<td>208</td>
</tr>
</tbody>
</table>
MANIFESTO COMMITMENT

In their manifesto for the 2016 Scottish Parliamentary elections, the SNP put forward a proposal to increase Carer’s Allowance for those who care for more than one disabled child, to recognise the higher costs involved. The SNP did not say how much the increase would be. As at August 2015, there were 32,400 children in Scotland, aged 15 and under, who were entitled to Disability Living Allowance (UK Government 2016o).

84-DAY RULE

In their submission to the Welfare Reform Committee, Aberlour criticised one of the rules of DLA (UK Parliament 2015u). A child who is in hospital for 84 days or more, either consecutively or linked to the same course of treatment, would lose their entitlement. Their carer would also lose their entitlement to Carer’s Allowance. Statistics released by the DWP on all DLA claimants in hospitals, shows that, for the 4 quarters before Personal Independence Payment was

\[ 11 \text{ May 2012, August 2012, November 2012 and February 2013} \]

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<table>
<thead>
<tr>
<th>Scenario at Scottish Greens rate</th>
<th>Caseload</th>
<th>Calculation</th>
<th>Estimated annual expenditure, £m</th>
<th>Implied additional annual expenditure, £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>H keep all existing rules, but increase the rate</td>
<td>66,140</td>
<td>New rate (93.15) x 52 weeks x caseload</td>
<td>320</td>
<td>107</td>
</tr>
</tbody>
</table>

Source: SPICe calculations

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11 Additional expenditure is calculated with reference to the current number of recipients (66,140) and the benefit rates (£62.10 per week). This implies annual expenditure of £214m, which is higher than the actual expenditure (£203m) and is likely to reflect the fact that not all recipients receive benefit for a full year. However, this provides a more meaningful basis for comparison with the estimates which assume receipt of the benefit for a full year.

12 May 2012, August 2012, November 2012 and February 2013
introduced, 190 children aged 15 and under were affected by the 84 day rule across Great Britain (UK Government 2016q).

Earlier that year, on 8 July 2015, there was a Supreme Court judgement\(^\text{13}\) which unanimously ruled that suspending a child's DLA after 84 days in hospital breached his human rights under article 14 of the European Convention of Human Rights. However, the Supreme Court’s judgment only related to the child in question and the provision to suspend the 84 day rule for all children was left to the Secretary of State.

On 22 September 2015, the Scottish Government announced that it would scrap the rule:

“The change will come into force once the powers are passed to the Scottish Parliament, and means families whose children are seriously ill will continue to receive DLA. It will also mean that the child’s family can continue to receive Carer’s Allowance.” (Scottish Government 2015c)

In January 2016, the UK Social Security Advisory Committee\(^\text{14}\) considered draft regulations that would remove the 84 day rule. The minutes of that meeting (see agenda item 5A) show that the DWP proposed to extend the provision to children up to the age of 18 who are in receipt of PIP, because there is a similar rule which stops the benefit once a recipient has been in hospital for 28 days.

The SNP Manifesto contained a commitment to abolish the 84 day rule for children in receipt of DLA.

On 8 May 2016 the Social Security (Disability Living Allowance and Personal Independence Allowance) (Amendment) Regulations 2016 (SI 2016/556) were laid before the UK Parliament. The regulations come into force on 29 June 2016 and will remove the 84 day and 28 day payment limits for DLA and PIP for hospital in-patients who are under 18 on the day they enter hospital.

**CARERS (SCOTLAND) ACT 2016**

The Carers (Scotland) Act 2016 received Royal Assent on 9 March 2016. It redefines a ‘carer’ for local authority assessment purposes. Once the Act is in force there will no longer be a requirement for the care provided, for the purposes of such assessments, to be ‘substantial’ and ‘regular’. It is worth noting that regular and substantial in this context was not defined in the same terms as for Carer’s Allowance, i.e. carers did not have to show they provided 35 hours of care a week to be able to request a local authority assessment. This does not alter anything in relation to Carer’s Allowance.

Currently, carers who provide regular and substantial amounts of care to a person in receipt of community care services, have a right to request an assessment of their ability to care. Following the assessment, the local authority can provide support services to meet the identified needs. Regulations stipulate that a local authority must waive charges for these support services.

The Act removes the requirement that a carer seeking an assessment of their needs should be caring for someone for whom the local authority must or may provide, or secure the provision of, community care services or services appropriate to a child’s needs (Robson and Hudson 2015).

\(^{13}\) Cameron Mathieson v Secretary of State for Work and Pensions [2015] UKSC 47 (8 July 2015)

\(^{14}\) The Social Security Advisory Committee (SSAC) is an independent statutory body that provides impartial advice on social security and related matters. It scrutinises most of the complex secondary legislation that underpins the social security system.
Under the Act, local authorities will have a duty to provide support to carers who meet locally agreed eligibility criteria. They would also have a discretionary power to provide support for needs that do not meet the criteria. Local authorities will be required to consult on the local criteria and review them every three years. Carers organisations voiced concern that locally set criteria could lead to a postcode lottery and favoured nationally set criteria. Ministers will also have the power to set national eligibility criteria; if this happens the national eligibility criteria would supersede any local criteria. Where support is provided to eligible carers, charges will be waived.

The Scottish Government has indicated that it will ensure a new benefit for carers provides better integration with carer support in Scotland (Scottish Government 2016b).
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RELATED BRIEFINGS

SB 15/24 Carers (Scotland) Bill – 01 May 2015


SB 16-51 Scotland Act 2016 – Universal Credit – 3 June 2016

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Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH 99 1SP

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