

CARER’S ALLOWANCE SUPPLEMENT (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B¹ of the Parliament’s Standing Orders in relation to the Carer’s Allowance Supplement (Scotland) Bill (“the Bill”). It describes the purpose of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The purpose of the Bill is to provide carers in receipt of Carer’s Allowance with extra financial support due to the loss of income and increased costs many have faced as a result of the coronavirus outbreak and to confer a power to make regulations allowing for future increases to the amount of Carer’s Allowance Supplement to be paid for a period.

RATIONALE FOR SUBORDINATE LEGISLATION

4. The Bill contains two delegated powers which are explained in more detail below. The Scottish Government has had regard, when deciding what subordinate legislation powers and respective Parliamentary procedures are appropriate for the Bill and whether provisions should be in primary or in subordinate legislation, to the need:

- to set out provision in a coherent way for users of social security legislation, while providing flexibility to respond to changing circumstances (for example the possibility of future increases to the amount of Carer’s Allowance Supplement paid for a period to mitigate the impacts of any future restrictions in response to the coronavirus pandemic); and
- to make proper use of valuable Parliamentary time.

¹ [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

DELEGATED POWERS

Section 2(a) – Power to increase amount of carer's allowance supplement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

5. Section 81 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) places a statutory duty on the Scottish Ministers to pay a supplement on a twice-yearly basis to persons who, on the qualifying date for the supplement, were in receipt of Carer's Allowance and resident in Scotland (or otherwise met the eligibility conditions referred to in section 81(2A) of the 2018 Act). The section provides for the Scottish Ministers to determine the “qualifying date” in each half of the financial year and for the calculation of the amount of the supplement (currently 26 times the difference between the weekly rate at which Carer's Allowance is paid and the weekly rate of Jobseeker's Allowance on the qualifying date for each supplement).

6. Section 2(a) of the Bill inserts subsection (4C) into section 81 of the 2018 Act. Subsection (4C) confers on the Scottish Ministers the power to modify this section, by regulations, so as to provide that the amount of a carer's allowance supplement in respect of any period specified in the regulations is greater than the amount that is calculated according to the formula in section 81(4) of that Act.

Reason for taking power

7. The policy objective is to enable the Scottish Ministers to provide unpaid carers who receive Carer's Allowance with extra financial support if necessary. It is intended that additional support will be provided where necessary to help mitigate negative financial impacts and help to relieve some of the stress associated with additional and different caring responsibilities that may arise. This is in line with the Scottish Government's broader policy objective to support carers to protect their health and wellbeing so they can continue to care if they so wish and have a life alongside caring.

8. The recent coronavirus outbreak has identified a need for greater flexibility within the system for providing financial support to carers. The provision of the Carer's Allowance Supplement under section 81 of the 2018 Act was intended as a short term measure until Carer's Allowance for unpaid carers in Scotland was replaced by a new carer's assistance under the framework of the 2018 Act. The delays to delivery of the programme for the devolution of social security resulting from the coronavirus pandemic mean that the provisions in section 81 of the 2018 Act will be in place for longer than previously anticipated.

9. The Scottish Government considered limiting the use of the power specifically to responding to the current coronavirus pandemic but consider that recent experiences have highlighted the need for greater flexibility to respond to unforeseen future events and that a

broader power would be more appropriate. Once the replacement assistance for Carer's Allowance is in place, and existing Scottish clients have been transferred onto the new carer's assistance, it is anticipated that section 81 (including any amendments made by this Bill) will be repealed under the power conferred by section 82 of the 2018 Act. In addition, any regulations made under section 81 of the 2018 Act may be revoked under the section 82 power.

Choice of procedure

10. The Scottish Government's proposal is that regulations under section 2 of the Bill should be subject to the affirmative procedure. Affirmative procedure is considered appropriate given the nature of the provision and the fact that its use involves modification of primary legislation. It is therefore appropriate that the Scottish Parliament is afforded the higher level of scrutiny of any proposal by the Scottish Ministers to increase the amount of the payment of Carer's Allowance Supplement for a particular period.

SECTION 3(2) – COMMENCEMENT

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

Provision

11. Section 3(2) confers a power on the Scottish Ministers to bring section 2 of the Bill into force on a day they appoint by regulations.

Reason for taking the power

12. The power to be conferred by section 3(2) will enable the Scottish Ministers to specify a day on which the power to increase Carer's Allowance Supplement which is to be conferred by section 2(a) (and the consequential amendment to be made by section 2(b)) may be commenced.

Choice of procedure

13. As is usual for commencement regulations, the default laying requirement will apply as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The Government considers this appropriate because the policy behind section 2 of the Bill will already have been considered by the Parliament during the passage of the Bill.

This document relates to the Carer's Allowance Supplement (Scotland) Bill (SP Bill 2) as introduced in the Scottish Parliament on 22 June 2021

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