

Written submissions on the draft Carer's Allowance Supplement (Qualifying Individuals) and Young Carers Grant Amendment (Scotland) Regulations 2020

### **Submission 1 from Child Poverty Action Group:**

CPAG in Scotland welcome the opportunity to provide our views on the draft Carer's Allowance Supplement (Qualifying Individuals) and Young Carers Grant Amendment (Scotland) Regulations 2020. We are happy for our submission to be published.

#### **Determination of EEA resident's entitlement to carer's allowance supplement**

Regulation 4(1) states that Scottish Ministers must make a determination on an individual's entitlement to carer's allowance supplement (CAS) on receiving an application, or without receiving an application if appears that the individual may satisfy the criteria set out in regulation 6. It may be advisable to specify the time by which a determination without application must be made so that individuals do not make unnecessary applications. Alternatively Scottish Ministers could be required to publish qualifying dates and payment dates.

Regulation 4(5) conveys re-determination and appeal rights to individuals applying for CAS from outside of the UK that are not available to individuals applying within the UK. The policy note states this is because CAS is an automatic payment which does not require Social Security Scotland to carry out a determination, however it may be simpler to confer the rights to both applicants in and outside the UK.

#### **Determination following official error – underpayments and overpayments**

Regulation 7 states that Scottish Ministers must make a determination without application where it is established that a previous determination was incorrect due to official error resulting in an individual not receiving CAS that they were entitled to.

Regulation 8 states that Scottish Ministers must make a determination without application where it is established that a previous determination was incorrect due to official error resulting in an individual receiving CAS that they were not entitled to.

It may be simpler to confer these rights to individuals within the UK in addition to individuals who are resident in the EEA. This may include for example: individuals living between England and Scotland, or whose postcode is incorrect on DWP systems.

#### **Young carer grants**

Individuals between the ages of 16 and 18 may claim a young carer grant if they meet the relevant criteria and have provided sufficient care in 10 out of 13 weeks prior to their application. Regulation 9 allows for individuals resident in the EEA to make a retrospective application in respect of a 13 week period between the date these regulations come into force and a date to be specified in December 2020. To

maximise take-up this window for allowing retrospective applications could be opened to individuals residing in the UK too.

The window for allowing individuals residing in the EEA to make retrospective applications is very short and does not allow time for individuals to find out about the change. Leaving the window open for longer would likely only have a minimal financial impact given the very small numbers of individuals likely to be involved.

Regulation 9(6)(f) implies that separate applications will need to be made in respect of each young carers grant. By the time these regulations are in force a small number of people may need to make two separate applications in respect of a past period and a separate application will have to be completed in respect of a current entitlement too.

Regulation 9(7) adopts the UK Government's approach to exportability. EU law does not prevent the Scottish Ministers taking a more generous approach if they so wish.

Regulation 9(8) allows an individual residing in the EEA 42 days to request a redetermination, whereas the time limit for individuals residing in the UK is 31 days. It also allows Scottish Ministers 56 days to carry out a re-determination rather than 16. The justification for this longer period is unclear.

Regulation 9(9) could amend the regulations to include the historic rates of Young Carers Grant and the dates which they applied for simplicity and ease of locating the relevant information.

**Submission 2 from Dr Charles O'Sullivan, School of Law, Ulster University:**

I can see no significant issues with the proposal - it appears to comply with the requirements of portability and also to be a thoughtful consideration of the policy implications.

My only note, is something mentioned briefly in the policy note but which is important to stress, and that would be that whilst the sufficient link test should not be included in the Regulation, the successful implementation of this will be dependent upon the guidelines that follow.

In that respect, I would suggest using a best practice guide with examples from other Member States and based upon the jurisprudence of the CJEU, *and* that informational and training sessions be arranged to ensure that it's fully understood. Broad qualitative tests like this can often lead to divergences in application - as seen with a habitual residence condition - so while any guidelines should not be overly prescriptive, 'marginal' cases that would qualify should be considered for inclusion in the same guide, with the proviso that these are only indicative and not the *de minimus*.