

The Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020

Draft impact assessments

November 2020

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We have set out below our consideration of the impacts of the above regulations on equality and human rights and the reasons why wider impact assessments are not considered necessary in respect of these. The assessments have been limited by the nature and scope of the changes being made to Carer's Allowance Supplement (CAS) and Young Carer Grant (YCG) through these regulations but it is our intention to keep these under review as the regulations are considered and as the service to provide these benefits is developed, and on an ongoing basis. This will also inform future work on other forms of devolved assistance which is to be made available outside of the UK.

Background

European Union (EU) rules on social security coordination apply across the European Economic Area (EEA) and Switzerland. They are intended to ensure that people exercising their rights of free movement within the EEA and Switzerland are not adversely affected by the application of different social security systems.

Each Member State is under an obligation to report new benefits introduced or material changes to existing benefits to the Administrative Commission for the Coordination of Social Security Systems. This is an EU Committee with representatives of each Member State which meets at least four times each year to facilitate dialogue between Member States and promote the proper functioning of the EU rules.

In discussions between UK Government and the Administrative Commission on existing devolved forms of assistance, the Administrative Commission's view was that CAS and YCG fall within the scope of the EU coordination rules, having been classified as social security 'cash sickness benefits'. Both forms of assistance have no direct UK-level equivalent, however, Carer's Allowance (CA), which is the qualifying benefit for CAS, is an 'exportable' benefit – as are, in part, the qualifying disability benefits which the cared-for person must be receiving for both CA and YCG.

The Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations will expand the residency criteria for both forms of support to meet the requirements of the EU rules. This will mean people can apply for and receive these benefits where they are resident in the EEA or Switzerland, where the United Kingdom remains the 'competent state' for payment of sickness benefits to them, and they can demonstrate a 'genuine and sufficient link' to Scotland.

A 'genuine and sufficient link' test has been found in court to be compatible with the social security coordination rules. It's not a set of prescribed factors, but can take into account things like whether someone has spent a significant part of their life in the place in question, whether they have worked, paid contributions, own property or have family there. We will set out the detail of this in guidance for Social Security Scotland. By not setting this out in regulations, we will ensure that the test is sufficiently flexible in the range of factors through which someone can demonstrate this link, in order to meet the EU law requirements.

Carer's Allowance Supplement

CAS was introduced in September 2018 to provide additional support to people in receipt of CA in Scotland. It was created in recognition of the important role of carers and to address the fact that CA was otherwise the lowest of all working-age benefits. It was initially set at a level which would raise CA to the equivalent of the rate of Jobseeker's Allowance (JSA) for those 25 and over, however following uprating the combined support of CA and CAS now exceeds the rate of JSA for 2020/21. For 2020/21 the rate of CAS is £230.10 per payment.

As originally drafted, to be eligible for CAS, carers must be resident in Scotland, and in receipt of CA, on the relevant qualifying date. Two qualifying dates per year are chosen by Scottish Ministers and two CAS payments are made each year. To be eligible for CA an individual must be 16 or over, spend at least 35 hours a week caring for a person who qualifies for specified disability benefits, not be in full-time education for more than 21 hours per week, and not earn more than £128 per week (in 2020/21) after deductions.

Young Carer Grant

Young Carer Grant was introduced in October 2019 to enable young carers to get respite and access life opportunities which are the norm for many other young people, as they make the transition into adulthood. It is a yearly payment of £305.10 (in 2020/21) for young carers in Scotland.

To be eligible for YCG, carers must be aged 16, 17 or 18 years old and caring for an average of 16 hours a week for a person in receipt of certain disability benefits, and not be in receipt of CA. Hours of care for up to three people can be added together to reach the 16 hours threshold. As originally drafted, young carers must be 'ordinarily resident' in Scotland but can receive YCG whilst resident in the EEA or Switzerland where they have been properly paid a grant previously in Scotland.

Who will this affect?

As highlighted above the regulations will extend eligibility for CAS and YCG to some carers living in the EEA and Switzerland who otherwise meet the eligibility criteria for these forms of support. As highlighted above, current provisions for YCG allow for carers living in the EEA and Switzerland to receive the Grant where they have properly received a payment previously in Scotland, but these regulations will allow carers to apply for and receive this support for the first time from outside of Scotland, where the UK is the 'competent state' for payment of cash sickness benefits to them and they can demonstrate a 'genuine and sufficient link' to Scotland.

It should be noted that exportability provisions are likely to apply only to the 'protected cohort' covered in the Withdrawal Agreement, or equivalent provisions in the Swiss Citizens' Rights Agreement and EEA EFTA Separation agreement, that is those who move to the EEA or Switzerland by 31 December 2020. There remains a level of uncertainty on if, and how, benefits will be exported to UK citizens who move to countries in the EEA or Switzerland, other than Ireland, after 31 December 2020, as this is dependent on the outcome of negotiations between the UK and EU. Under the terms of the UK/Ireland Convention on Social Security, the same arrangements for social security coordination that exist at present will be maintained for those moving between the UK and Ireland.

Data on CA recipients currently outside of Scotland indicates that between 20 and 120 people may be eligible to claim CAS. There is no Department of Work and Pensions (DWP) benefit equivalent to YCG, so data is not available on potential caseload, however, we are not aware of any applications for this support from outside of Scotland to date, and would estimate a similarly small client base.

Data is not available on the demographics or characteristics of carers who may be eligible to, or seek to, receive payment of CAS or YCG abroad. Given the criteria carers are required to meet to export this support, we anticipate that people who may be eligible to claim CAS and YCG will be those living in the EEA or Switzerland who are not employed where they live, but continue to be employed by the UK, and those who are in receipt of a UK state pension. They may also be the dependent of a family member who is accessing a UK state pension or posted abroad, for example via the armed forces.

How is this being delivered?

For YCG, existing application processes will be amended to allow for applications to be made by carers living outside of the UK. For CAS, an application process will be put in place for carers living outside the UK only. This is because CAS was designed as an automatic payment for eligible carers in Scotland and no applications are needed for carers resident in Scotland.

Given the small numbers of carers living outside of the UK that will be eligible for CAS, and the fact that CAS is an interim solution, it would not be possible or proportionate to create an online application process for CAS or make significant changes to the existing online process for YCG at this stage. In light of this, the initial options open to clients applying from outside of Scotland will be through a paper form or by telephone. For CAS a new application form is being created and for YCG an amended form is being produced to allow clients to demonstrate they meet the eligibility requirements for receipt of YCG abroad. Social Security Scotland client advisors will receive guidance on the changes to CAS and YCG and supporting materials will be made available for applications. Decision letters will be issued to clients and payments will be made using existing Social Security Scotland processes.

Assessment of impacts on equality and human rights

Given the small numbers involved and the availability of data it is not possible to consider in detail the potential impact of these regulations on people with one or more protected characteristics. However, Equality Impact Assessments (EQIAs) were carried out for CAS and YCG¹ as part of the development of these forms of support, in consultation with stakeholders and informed by evidence from public consultations and research with carers.

These EQIAs did not find any evidence that the benefits would have negative impacts on those from protected groups, and instead found that benefits should have positive impacts on carers and those they care for. In particular, the support should have a disproportionate positive impact on women – for example 69% of CA recipients are women – and disabled

¹ Young Carer Grant impact assessments: <https://www.gov.scot/publications/young-carer-grant-impact-assessments/>, Carer's Allowance Supplement equality impact assessment: <https://www.gov.scot/publications/carers-allowance-supplement-equality-impact-assessment/>

people, as the majority of cared for people are likely to be disabled as the eligibility criteria for both forms of support requires that the cared-for person be in receipt of a disability benefit.

The CAS EQIA recognised that there may be carers who would be eligible for, and benefit from CAS, who may miss out due to barriers to accessing CA, including CA eligibility criteria, or a lack of access to advice and support about it. While amendments to CA and uptake of this support are not within the scope of these regulations, we will be promoting the availability of CAS as part of our communications on the changes, and we remain committed to investigating and addressing these issues further in the development of our replacement benefit for CA.

Child Rights and Wellbeing

Data is not available on the numbers of children and young people who may be affected by these regulations. However, Child Rights and Wellbeing Impact Assessments (CRWIAs) were carried out for CAS and YCG².

These did not find any evidence that either benefit would infringe upon the rights of the child as set out in the articles of the UNCRC, or the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014. Instead these should have a direct positive impact on young and young adult carers who receive this support and an indirect positive impact on any disabled children and young people who are cared for by those who receive these benefits.

The CRWIA for CAS identified that young carers are less likely to be receiving CA, largely due to the eligibility criteria which require carers to be 16 or over, not in full time education, and providing 35 hours of care or more per week, and that take-up may also be affected by a lack of recognition of caring roles or a reluctance to come forward for support. Changes to CA criteria are not in scope for these regulations but are being considered as part of the development of our replacement benefit for CA. YCG was also introduced to provide some financial assistance for young carers who are not in receipt of CA.

Fairer Scotland Duty

Data is not available on how inequalities of outcome or socio-economic disadvantage may affect carers who could be eligible to receive CAS or YCG outside of Scotland. However, research on carers in general shows that poverty levels increase with the amount of care provided, and carers in receipt of CA are expected to have lower than average incomes because of the earnings threshold which applies to eligibility. YCG is not an income replacement benefit, but in Scotland young carers are disproportionately from areas of multiple deprivation.

Conclusions and actions

Given the small numbers of carers affected by the changes being made to CAS and YCG through these regulations we are limited in the assessments we are able to make of the

² Young Carer Grant impact assessments: <https://www.gov.scot/publications/young-carer-grant-impact-assessments/>, Carer's Allowance Supplement Child Rights and Wellbeing Impact Assessment: <https://www.gov.scot/publications/carers-allowance-supplement-child-rights-wellbeing-impact-assessment/>

impact of these on affected carers with one or more protected characteristics, on children and young people, and in relation to inequalities in income. This may also affect the applicability to this group of the findings of the impact assessments already carried out.

However, we also recognised in carrying out the impact assessments for CAS and YCG that there was limited data on young carers, young adult carers and carers in receipt of Carer's Allowance in Scotland with protected characteristics and in relation to income inequalities.

We are working to improve the availability of overall equality data in relation to those applying for and receiving devolved benefits. In December 2019, Social Security Scotland began mandatory collection of equality data as part of the benefit application process, with a 'prefer not to answer' option, which should improve data on the protected characteristics of YCG and other benefit applicants. In addition to this, in August 2020, Social Security Scotland launched a survey of all clients. This will reach out to nearly 170,000 people and aims to measure how well Social Security Scotland is delivering a social security system based on the values of dignity, fairness and respect.

People completing the survey will also be offered the opportunity to take part in new Client Panels, building on the work of the Experience Panels who supported the development of the social security system in Scotland and the devolved benefits, including CAS and YCG. Client Panel members will be regularly asked for their opinions in several ways, including online and telephone interviews and surveys.

As highlighted above, the provisions and services for claims from outside the UK, over and above those currently existing for YCG, are not yet in place and we appreciate that the small numbers affected by these will mean it would not be possible to analyse Social Security Scotland data for this specific group. However, we would aim to apply lessons learned from this to the delivery of these services.

We also recognise that ensuring awareness and uptake of devolved benefits among those living outside of Scotland will be a challenge – and we already understand from earlier impact assessments that awareness and uptake of benefits may be low in young and young adult carers, and carers from minority ethnic groups. We are working with communications colleagues and speaking to stakeholders to identify the most effective communications and engagement strategies to reach potentially eligible carers and to ensure communications are accessible and meet the needs of carers and those who support them.

The size and nature of the client base for these changes to YCG and CAS mean it will not be possible to conduct user research with those affected. Nevertheless the development of the service will be informed by what we have learned from research and user involvement in benefits development to date, including for CAS and YCG, to ensure the processes, guidance and training developed to support delivery of this meet the needs of service users. As highlighted above we are engaging with stakeholders on the development of the processes and communications to deliver the exported forms of support.

As set out in this document, applications for CAS and YCG from outside Scotland will be available through paper forms and by telephone. We recognise that for YCG in particular, clients would prefer an online application option. We also recognise that telephone will not be a suitable option for carers who are deaf or have hearing loss. We are, therefore,

working to provide access to a web chat facility for clients looking to apply for YCG or CAS from the EEA or Switzerland to allow carers to discuss paper applications online.

Monitoring and review

Once provisions are in force and being delivered we will monitor the numbers of applications and payments made in respect of clients outside of Scotland, recognising it may not be possible to disaggregate these into groups. We also take regular feedback on our benefits and services through our ongoing engagement with stakeholder groups and would seek immediate feedback once services have begun and review on an annual basis thereafter.

Operation of the provisions will also benefit from wider evidence on the delivery of CAS and YCG by Social Security Scotland, including through the monitoring and research highlighted above. Social Security Scotland collates and publishes statistics on feedback received since it launched in September 2018, which includes statistics for specific benefits as well as feedback that is not benefit-specific.

We will also be able to apply lessons learned from wider research into, and evaluation of, the impacts of CAS and YCG in Scotland. The CAS evaluation will be published in autumn 2020 and includes the findings of research with recipients of CAS. It will evaluate the extent to which CAS has achieved its policy objectives, explore the impact of these findings on achieving wider outcomes for carers, and identify any implications for future policy development.

Work has begun on the interim evaluation of YCG which will assess the impact of the benefit against its short-term policy aims and against any issues identified in the EQIA. We have established a Research Advisory Group (RAG) to support this project. We are considering how best to engage with young carers and support organisations during the pandemic to ensure we can still reach as many people as possible. We are aiming to publish the interim evaluation report by summer 2021. This will set the groundwork for policy improvement and feed into the development of the full evaluation scheduled for 2024.

We will also be learning from the feedback and evaluations above and undertaking more comprehensive impact assessments as part of the development of regulations to provide our replacement for CA in Scotland.

Island Communities Impact Assessment

The Islands (Scotland) Act 2018 provides for a duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation. Section 13 of this Act obliges Scottish Ministers to prepare an Island Communities Impact Assessment (ICIA) in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities in Scotland.

We do not consider that these regulations are likely to have an effect on any island community which is significantly different from their effect on other communities in Scotland and as such an ICIA has not been carried out.

Business and Regulatory Impact Assessment

A Business and Regulatory Impact Assessment (BRIA) was carried out for the 2018 Act, which includes provision for CAS, and a separate BRIA was carried out for YCG. It is not considered to be necessary for a further BRIA to be carried out for these regulations in light of the scope of the changes being made to CAS and YCG. These regulations are being brought forward to ensure CAS and YCG can be paid to eligible carers outside of Scotland in line with EU rules. The numbers affected are expected to be very small and as such there will be limited impacts from this change.

While it is expected that changes could lead to additional requests for information and guidance from advice and support services, we will be engaging with the advice services sector and carer support organisations in developing our communications and engagement approach on the changes being made to eligibility and as above would expect only very small numbers of carers to require assistance with this.

Strategic Environmental Assessment

A Strategic Environmental Assessment (SEA) has not been carried out for these regulations. This is because pre-screening for SEA identified that as these regulations are a purely financial measure, they are likely to have limited environmental impacts.

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