

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT CARER'S ASSISTANCE (CARER SUPPORT
PAYMENT) (SCOTLAND) REGULATIONS 2023
(CONSEQUENTIAL MODIFICATIONS) ORDER 2023

Tuesday 14 November 2023

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The Committee consisted of the following Members:

Chair: † CAROLYN HARRIS

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| † Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| † Grundy, James (<i>Leigh</i>) (Con) | † Malthouse, Kit (<i>North West Hampshire</i>) (Con) |
| † Jenkinson, Mark (<i>Workington</i>) (Con) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| † Jones, Mr David (<i>Chwyd West</i>) (Con) | † Penrose, John (<i>Weston-super-Mare</i>) (Con) |
| † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) | Vaz, Valerie (<i>Walsall South</i>) (Lab) |
| † Lamont, John (<i>Parliamentary Under-Secretary of State for Scotland</i>) | † Western, Andrew (<i>Stretford and Urmston</i>) (Lab) |
| † Langan, Robert (<i>High Peak</i>) (Con) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| † Latham, Mrs Pauline (<i>Mid Derbyshire</i>) (Con) | Huw Yardley, <i>Committee Clerk</i> |
| Lewis, Clive (<i>Norwich South</i>) (Lab) | |
| † Linden, David (<i>Glasgow East</i>) (SNP) | † attended the Committee |

Third Delegated Legislation Committee

Tuesday 14 November 2023

[CAROLYN HARRIS *in the Chair*]

Draft Carer's Assistance (Carer Support Payment) (Scotland) (Consequential Modifications) Order 2023

9.25 am

The Parliamentary Under-Secretary of State for Scotland (John Lamont): I beg to move,

That the Committee has considered the draft Carer's Assistance (Carer Support Payment) (Scotland) (Consequential Modifications) Order 2023.

The draft order was laid on 16 October 2023. I am grateful to have the opportunity to debate it. The order is the result of collaborative work between Scotland's two Governments, and it supports the Scottish Government's decision to introduce the carer support payment in Scotland.

The Scotland Act 2016 devolved responsibility for certain social security benefits and employment support to the Scottish Parliament. The introduction of carer support payment in Scotland under the Social Security (Scotland) Act 2018 exercises that responsibility. The draft order is made under section 104 of the Scotland Act 1998, which allows for necessary legislative amendments in consequence of any provision made by or under any Act of the Scottish Parliament.

Scotland Act orders are a demonstration of devolution in action. I am pleased to say that this draft order is the result of close working between my office and the Scottish Government, the Department for Work and Pensions, the Ministry of Defence, His Majesty's Revenue and Customs, and Northern Ireland's Department for Communities. I thank all involved for the collaborative approach taken to progress the order.

The draft order makes amendments to relevant social security legislation as a consequence of the Carer's Allowance (Carer Support Payment) (Scotland) Regulations 2023, which I shall refer to as the 2023 regulations. Those regulations replace carer's allowance with carer support payment for individuals ordinarily resident in Scotland.

The 2023 regulations introduce carer support payment in Scotland in a phased approach from November 2023, beginning with a pilot in three local authority areas and to be available nationally by autumn 2024. The carer support payment will initially operate in a broadly similar way to carer's allowance. Like carer's allowance, it will be an income replacement benefit, a payment of £76.75 per week for unpaid carers providing 35 hours or more of care a week to someone receiving certain disability benefits.

I will now explain the effect that the draft order will have and the provisions that it will make. The order will ensure that those receiving carer support payment in Scotland are treated the same as those receiving carer's allowance. The order ensures that carer support payment is a qualifying benefit for the Christmas bonus. It ensures

that those eligible for carer support payment are treated as qualifying carers and are eligible to receive the additional amount for carers in an award of state pension credit. It also ensures that recipients are not disadvantaged in relation to compensatory payments as part of the HMRC tax-free childcare scheme.

The draft order ensures that it is not possible for any one person to receive both carer's allowance and carer support payment at the same time. Similarly, no more than one person would be able to receive a carer's benefit for care provided to a single individual. Some benefits administered by Veterans UK overlap with the carer support payment; the order makes provision to ensure that an individual cannot receive those overlapping benefits at the same time.

The draft order makes equivalent provision in Northern Ireland in respect of those policy areas that are transferred to Northern Ireland. That is because, when a claimant moves to Northern Ireland, they will continue to receive carer support payment for 13 weeks from the date that they moved while they apply for carer's allowance. In that time, their carer support payment benefit will continue to attract the related entitlements. The 13-week run of support will also be available when carers move from Scotland to elsewhere in the UK.

In summary, the draft order makes amendments to UK legislation to support the introduction of carer support payment in Scotland. It ensures that the new Scottish benefit is able to operate effectively and that its recipients are treated equitably. I commend the order to the Committee.

9.29 am

Gerald Jones (Merthyr Tydfil and Rhymney) (Lab): It is a pleasure to serve under your chairmanship for the first time, Mrs Harris.

As has been said, the order will allow the Scottish Government's carer support payment to go ahead with the necessary parliamentary approval. The carer support payment will be administered by Social Security Scotland and will replace the carer's allowance, which is currently administered by DWP. The order is not controversial and we do not oppose it.

I do not wish to delay proceedings unnecessarily, but I want to put a few things on the record. The Scottish National party said that it wanted powers over social security devolved in order to build a different welfare system from that of the UK Tory Government, but it has left those powers in their hands due to its slowness in setting up a Scottish system. It is welcome that, according to the Carers Trust, 80,000 carers will be able to benefit from the carer support payment, but there are an estimated 800,000 people in Scotland providing unpaid care, including 30,000 young carers under the age of 18. The total value of unpaid care is estimated to be £12.8 billion per year.

The devolution of social security has been somewhat chaotic from the beginning. It was delayed multiple times over several years, and the wait times for some benefits have spiralled to even longer than the current Tory-run DWP waiting times in Scotland. The people of Scotland deserve to have two Governments on their side, which, unfortunately, does not seem to be the case at the moment. As I said at the start, we do not oppose the order.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Will the Labour party commit to replicating what the Scottish Government have done by broadening qualification for carer support and increasing the amount received by carers?

Gerald Jones: That is a matter to be debated at some point in the future, I am sure.

9.31 am

Kit Malthouse (North West Hampshire) (Con): It is a pleasure to appear before you, Mrs Harris.

I have some questions for the Minister on the operation of the scheme. First, however, it is worth reflecting on the fact that we are dealing with quite a complex set of regulations that arises entirely from devolution. I suppose it illustrates to the people of Scotland and the rest of the United Kingdom the significant complexity that is being introduced into our legal system and benefit system by devolution. I was surprised that the Minister said he was pleased to see the order arrive because, to me, it represents an unnecessary complexity in the United Kingdom, which we could all do without.

Like the hon. Member for Merthyr Tydfil and Rhymney, and having worked at DWP, I am also concerned by the devolution of what is quite a complicated and difficult administrative task to the Scottish Government—not necessarily the SNP—who have not covered themselves in glory with the administration of various schemes and various ideas they have had over the last couple of years. Given the delay and the failure to institute a new system—it has been on the cards for some years—*[Interruption.]*

David Linden (Glasgow East) (SNP) *rose*—

Kit Malthouse: What confidence does the Minister have that the Scottish Government will be able to administer benefits to the extent that they get to the people who need them and the system will not collapse, as so many other things seem to have done? I wonder whether the Minister has any sense of the deadweight cost of having a separate organisation called Social Security Scotland on the budget. Obviously, it has to maintain its own back office, its own personnel and its own administrative burden, and there must be an extra cost, which is therefore being denied to the recipients of welfare payments because it is going into the hands of unnecessary administrators.

I also had a question about age limits. I am the patron of Andover Young Carers, an organisation that supports young people who are in full-time education and who look after an adult in their family living with a disability. Although I know that carer's allowance is constrained for those who are under 16 or in full-time education, I have never quite understood why we do not look at the particular case of a young person who might be caring for a parent with a severe disability where there is no other carer available. They do so with a burden that no other adult carer broadly shares, yet we exclude them from such schemes. I would be interested in the Minister's comments on that.

My second point is about the operation of the scheme. On reading the statutory instrument, there seems to be an unnecessarily complicated administrative task in the case where there are effectively two people caring for one individual. Could the Minister confirm that they

will have to make daily elections—the SI talks about elections in a prescribed form—as to who is to receive the carer's allowance on that day? What form is that election to take? Is it a letter, a phone call or a text? Who will decide?

The SI then says that in the situation where both carers claim, it will effectively be for the Secretary of State to decide who gets the allowance. Will the Secretary of State be showered with thousands of competing claims for carer's allowance on an almost daily basis? If there is an election, how long will that endure? If there is a dispute between two carers about who gets the allowance the Secretary of State is given the discretion to make a decision, but what will be the process of appeal? How will carer B make a claim over carer A? What if there is carer C, who is not referred to in the legislation? In my experience, people with significant disabilities often have multiple carers who may work together as a team to support them. How will that be dealt with?

Finally, on the effect on the border, I am sure we will have a small number of cross-border carers—those resident in England who care for those resident in Scotland and vice versa. Who will pay them and where will the care be claimed? There is no reference to that in the legislation. Someone claiming carer support payment in Scotland will have to ordinarily be resident in Scotland. If I am ordinarily resident in Northumberland but care for somebody over the border, who will support me and how will I be supported in that care?

On the same theme, what happens if I am a family unit of a carer plus a disabled individual who move from Scotland to England or vice versa? How seamless will the transition be? Will there be a gap in payment? Will I have to apply before I move to have my domicile for the carer's payment moved, or will I have to apply when I arrive? Do I have to be ordinarily resident before I apply and if so, how long do I have to wait until that kicks in? Will it be six, 12 or nine months before I receive a payment? If I do receive a payment on moving to lovely Scotland, will it be backdated to the date of my arrival, or will England persist in paying me beyond my arrival until the Scottish Government cover the gap? None of those issues, which might only affect a small number of people but will nevertheless be critical to their welfare and survival, seem to be addressed in this SI. I should be grateful if the Minister would answer those questions.

9.37 am

David Linden (Glasgow East) (SNP): It is, as ever, a great pleasure to see you in the Chair this morning, Mrs Harris. I had not intended to speak and had been relatively relaxed about most of the things the Minister had said. Of course, I am struck by the fact that it is only me, my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East and the Minister who are Scottish MPs. I will put my jacket on, Chair, if you so desire. It is rather chilly here this morning, so I will put it back on.

I was struck by the contributions by the hon. Member for Merthyr Tydfil and Rhymney and the right hon. Member for North West Hampshire. I do not know if they are bored this morning and have come along. This is not a controversial order, but I take a couple of exceptions to their remarks.

Kit Malthouse: On a point of order, Mrs Harris. This is legislation being presented to the UK Parliament. We are Members of Parliament; our job is to scrutinise and ask questions of the legislation. I understand that it is common practice in Delegated Legislation Committees for people not to bother to read the legislation before coming into the room, but I happen to think that it is my duty, if I am presented with something that I am approving, to examine and ask what I believe are perfectly reasonable and relevant questions. If there is an answer, fine, but the fact that I am an English, not a Scottish, MP should have no bearing on the matter. This is UK legislation to enable the Scottish Government to do something.

The Chair: Thank you, Mr Malthouse. Your opinion has been heard.

David Linden: Thank you, Mrs Harris. As a former member of the Procedure Committee, I can categorically confirm that that is not a point of order. There is no suggestion that my remarks were out of order. It is notable as well that the right hon. Member for North West Hampshire would not take an intervention from me but sought to intervene during my speech with a point of order. Perhaps that is what former Ministers do.

I was quite struck by the right hon. Gentleman's point; it seemed he was questioning the very nature of devolution. Scottish Conservatives have ended up in a place where they accept that the nature of devolution means that things will be done differently in Scotland. He seemed to take great exception to the formulation of social security in Scotland. I think that would come as news to the Under-Secretary of State for Scotland, the hon. Member for Berwickshire, Roxburgh and Selkirk, whose party in the Scottish Parliament supported the establishment of Social Security Scotland—perhaps there may be a degree of divergence in the Conservative Benches on that. The whole nature of devolution means that things will be done slightly differently. In response to the right hon. Member for North West Hampshire suggesting that these are somehow complex benefits to roll out, I have to say that my party and my constituents will take no lectures from a Conservative Government who have been trying to roll out universal credit for the best part of 10 years and still have not managed that migration—presumably even in his constituency.

Something for the hon. Member for Merthyr Tydfil and Rhymney: I am struck by the fact that neither the hon. Member for Edinburgh South (Ian Murray) nor the hon. Member for Rutherglen and Hamilton West (Michael Shanks) are here this morning. I suspect they might know slightly more about the details of what Social Security Scotland is doing, because my colleagues in the Scottish Labour Party certainly do not have the objections that were laid out by the hon. Member for Merthyr Tydfil and Rhymney this morning. My final challenge to him would be that if, as looks likely, we end up having a Labour Government, I would love to know what they would do differently on social security policy. Those of us who follow it see a commitment to the sanctions regime and all sorts of other punitive measures. There appears to be absolutely no difference between the Labour party and the Conservatives—a point that is not lost on those in Scotland.

The Chair: Could we keep the comments for the Minister, and not for the Opposition?

David Linden: I apologise.

The Chair: Thank you.

9.41 am

John Lamont: I will start with an apology: I should have said at the start of my contribution what a great privilege it is to serve under your chairmanship, Mrs Harris.

I thank Members for their various remarks and welcome the support of Labour and SNP Members. On the various points raised by my right hon. Friend the Member for North West Hampshire, the broader point is that we have to recognise that this Parliament legislated for additional welfare powers to be delivered to the Scottish Government, which I and the current Government fully support. Others have said that a consequence of that will be differing types of system, including social security, being delivered on either side of the border. That is something which I also support and which we have to recognise is in the nature of devolution. That is how devolution in these islands works. The key for us is making sure that it works well.

As other Members have said, there have been delays in terms of the Scottish Government's capacity to take up these additional welfare powers. We have worked with them to delay, transfer, or ensure that their delivery has been done in a practical way to make sure that the people in need of those benefits are receiving them in a timely and straightforward manner. I do not necessarily agree with the thrust of some of the remarks by the hon. Member for Glasgow East. As I said at the start, it is important for us to recognise that devolution results in these variations, and this Government have to ensure that we work with the Scottish Government to deliver these benefits effectively.

My right hon. Friend the Member for North West Hampshire raised a number of points and questions, which I will try to answer. For example, what will happen if the claimant is a recipient of the UK Government's carer's benefit and then moves from England to Scotland? There will be a case transfer process from carer's allowance to the carer support payment. When a carer who is getting an equivalent benefit in England moves to Scotland, the reward will transfer automatically—there is no need to apply, and the DWP will continue to pay that for 13 weeks from the date of their move. Following the completion of that case transfer, alternative arrangements will be made to minimise the risk of claimants who are continuing to provide care experiencing a break in payments when they move.

My right hon. Friend asked a number of other questions. We will write to him on those, if that is okay, rather than go into some of the granular detail. However, at the interministerial level, the interministerial group on welfare, on which I sit, deals with many of those points and has dealt with many of them in readiness for this order. That includes work on the sharing of data and ensuring that both the new social security system in Scotland and the DWP are working in partnership to ensure that the types of points that my right hon. Friend raised are addressed properly. That will ensure that nobody is left without the benefits that they are entitled to or the support that they need, and that people are not claiming wrongly when they should not be.

I am confident that the working relationships that we have, at both the official and ministerial levels, will deal with those concerns and questions raised by my right hon. Friend. However, I do undertake to write to him on the detail.

Kit Malthouse: I wonder how much the Minister is willing to wager that he will not be back at some point in the future to correct anomalies in this legislation. If, as he is saying, the approach is, “Well, we’ll try it and see, and we’ll talk about the problems that may emerge and try and tease them out,” is he saying that the legislation is likely to change, and therefore is not comprehensive for some of the anomalies that may occur?

I know that I raised a number of questions about the operation of the scheme, but could the Minister just answer the question about cross-border carers? There will be a number of cross-border carers who, as we speak, will be wondering where they sit and would be grateful to have some clarity on that pretty quickly.

John Lamont: I am not a betting man, so I will not enter into a wager with my right hon. Friend. However, as I alluded to earlier, there will be differences between how the social security system works in Scotland and in the rest of the UK. That is simply a reflection of the devolution settlement. I do not doubt that there will be anomalies that will have to be fixed and addressed,

regarding both social security and other devolved policy areas. Again, that is just the nature of the constitutional settlement that we live with, and that is something that I just think we have to accept will be a reality, moving forward.

David Linden: Far be it for me to be of assistance to the Minister, but of course social security policy is devolved in Northern Ireland and there are similar cases with people moving cross-border between the Republic and the north of Ireland, and there has never been a question raised about that before.

John Lamont: Indeed. I think that there has to be a recognition. I repeat what I said: this Government absolutely support the devolution settlement and support the creation of this order. This order demonstrates the collaboration between both Governments to deliver. I will write to my right hon. Friend on the questions that he has raised, but this instrument demonstrates the continued commitment of the United Kingdom’s Government to work with the Scottish Government to deliver for Scotland and maintain a functioning settlement for Scotland.

Question put and agreed to.

9.47 am

Committee rose.

