

Social Security (Amendment) (Scotland) Bill

Submission by Who Cares? Scotland – 19 March 2024

Who We Are

Who Cares? Scotland is Scotland's only national independent membership organisation for Care Experienced people. Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland and we currently have just over 4,100 members.

At the heart of our work are the rights of Care Experienced people, and the power of their voices to bring about positive change. We provide individual relationship-based independent advocacy and a range of participation and connection opportunities for Care Experienced people across Scotland.

We work alongside Corporate Parents and various communities to broaden understanding and challenge the stigma faced by Care Experienced people. We work with policy makers, leaders, and elected representatives locally and nationally to shape legislation, policy and practice. We do this collaboratively to build on the aspirations of The Promise and secure positive change.

Summary of Who Cares? Scotland's Views on the Proposed Care Leaver Payment

Who Cares? Scotland welcomes the proposed introduction of the Care Leaver Payment under the Social Security (Amendment) (Scotland) Bill, however, our consultation response notes, that the proposed eligibility criteria will exclude many Care Experienced young people in need of support and widen inequality.

We are therefore in favour of a Care Experienced Young Person's Grant which supports all Care Experienced Young People aged 15-26 at the point of leaving care. This extension to 15-year-olds would provide protection to this group, who are frequently removed from their order shortly before their sixteenth birthday, and are therefore not eligible for aftercare, despite facing the same challenges.

This grant must be in line with the Promise's scope of Care Experience and accessible to all young people with experience of formal care and informal kinship care without an order, foster care, residential care, secure care, experience of adoption and those who are looked after at home. It must also support young people leaving care who were unaccompanied asylum-seeking children.

We are calling for a wider definition of Care Experience to be used, expansion of the scheme to 15-year-olds, to protect those who are removed from their order shortly before their 16th birthday, and a sunrise clause to ensure young people leaving care during the establishment of the scheme do not miss out on vital support.

We also call for an increase in the level of payment, given the rise in Cost of

Living and inflation. We believe it is critical that the Payment comes with clear guidance to local authorities, similar to the approach required with the Care Experienced Bursary, that the payment may not be considered as replacement for any current financial support. This includes current 'Section 29 grants' under the Children (Scotland) Act 1995 that local authorities already pay to care leavers at the point of leaving care, intended for purchases to set up their first home and other such costs.

In many areas, this grant exceeds £2000 and so, if permitted to be replaced by the Scottish Government Care Leaver Payment, will leave some young people in a financially poorer position.

The final theme of our Consultation response regards accessing the payment and is relevant to the regulations in the Bill. The process must be as simple as possible, ideally with a duty on social work departments to ensure all young people leaving care receive the payment and complete the application on their behalf. If it is necessary for young people to apply themselves, then we advise a simple and straight forward process, scrutinised by the SCoSS, and those with lived experience, with independent advocacy provision and rights information made available to offer support. We also recommend that Care Experienced adults, who were eligible but missed out on the payment for any reason, are able to claim the support retrospectively, given the impact of poverty for this population. In 2023, research by the Trussell Trust and Ipsos [*Hunger in Scotland*](#) found that Care Experienced people were twenty times more likely to be using foodbanks.

Finally, we recommend that if Care Experienced people are required to apply for the payment themselves, then the same broad range of professionals are able to vouch for their eligibility as for the Care Experienced Bursary, as this has been successful in removing barriers and additional bureaucracy to claiming the Bursary. This list includes:

- social worker
- teacher
- careers advisor
- college or university student advisor
- widening participation officer
- representative or employee from an advocacy group
- member of the children's panel
- child contact centre representative
- family mediation worker
- lawyer or solicitor
- notary public
- counsellor
- police officer
- minister of religion
- doctor
- nurse.

Response to the Committee's Questions

The Committee would be interested in any views Who Cares? Scotland may have on the regulation making power in section 2 of the Bill and in particular:

Q1: [Does Who Cares? Scotland believe that] Section 2 of the Bill provides the right framework for future regulations and would allow future regulations to include all that they require in terms of eligibility, payment, challenge rights, etc?

Section 2 appears to cover what would be expected, however, it is impossible to determine if the proposed regulations contain all that is required until the regulations are drafted, particularly in respect of eligibility criteria. Some possible areas of apparent omission, which might require specific attention at this stage are: residence and presence criteria, expectations of evidencing care experience, individuals in work or education, and care placement type.

Who Cares? Scotland represents Care Experienced people. We define this to be a person of any age who has spent time in care at some point in their life. We define care to include: foster care, residential care, secure care, formal and informal kinship care, being looked after at home on an order, and those who are now adopted. We strongly discourage policymakers from using the term Care Leaver without considering the often- unintended consequences that comes with this language.

'Care Leaver' is an age restricted eligibility rather than an identity, as per s.66 of the Children and Young People (Scotland) Act. If you leave care before your 16th birthday, you are not a 'Care Leaver' and therefore not eligible for aftercare (further support from social work). Aftercare is only available for people who leave care on, or after, their 16th birthday, and is potentially available up to age 26. This creates further inequality for Care Experienced people, as evidenced by Jasmin-Kasaya Pilling (on behalf of Who Cares? Scotland), 'Petitioner submission: Extend aftercare for previously looked after young people, and remove the continuing care age gap', PE1958/B, 24 October 2022.

“[There is a] loophole of leaving care before 16th birthday then no duty on social work to support through 20s - can lead to social work service predominantly being to get care experienced people back home before their 16th birthday to ensure no ongoing financial commitments. Everything is categories - we are all care experienced.”

Care Experienced person, Summer of Participation 2023

We are seeing a shift in policy and support from 'Care Leaver' to 'Care Experienced', as demonstrated by the Care Experienced Bursary, and have encouraged the Scottish Government to also broaden the scope of the payment from Care Leaver to Care Experienced. We recommend the Bill uses our definition of Care Experience over Care Leaver, as it will then benefit from being future proof and will provide the most meaningful impact to the community intended to benefit from it.

This payment is equivalent to the support many young people would be fortunate enough to rely on from their parents, when leaving home and living independently for the first time or moving to university. We, therefore, oppose the payment being contingent on a young person's employment or education status, or the payment being means-tested. It is there to remedy an inherent disadvantage and to remove a barrier to progression and the realisation of potential.

Consideration is required to ensure young people leaving care who were unaccompanied asylum-seeking children can benefit from the payment despite potential complications with no recourse to public funds. Scottish Ministers have equal Corporate Parenting Duties to these young people as any other looked after child, and a responsibility to offer financial support to them. NRPF does not apply to children, under Section 22 of the Children (Scotland) Act 1995 which places an imperative on local authorities to promote the welfare of all children in need. Therefore, we recommend that for unaccompanied asylum-seeking minors who may have issues receiving the grant due to NRPF that the grant is proactively paid in full before they turn 18 or leave care, whichever comes first. This will ensure they do not suffer additional disadvantage.

Impact on entitlement to other benefits and earnings may need special attention, to ensure that receipt of this assistance is not means tested, or that it comes at the expense of other entitlements. In particular, we are concerned that the rollout of this payment will see a decrease in financial assistance from the local authority under Section 29 of the Children (Scotland) Act 1995, which often exceeds the £2000 value of this proposed grant. We recommend that there are no overlapping benefits with the Care Leaver Payment and that it stands alone.

If this is to be considered at a later stage, we ask that you allow us to provide a response at that time, and certainly to the draft regulations.

Q2: [Does Who Cares? Scotland believe that] Care Experience Assistance regulations should be subject to scrutiny by the Scottish Commission on Social Security (SCoSS) in the same way as Scottish social security benefits? (the Bill as drafted requires consultation with those representative of individuals who have been in the care system but does not require scrutiny by SCoSS)?

Yes, Who Cares? Scotland supports the regulations being subject to scrutiny by the Scottish Commission on Social Security. We welcome additional scrutiny and accountability on public bodies to deliver on their duties to Care Experienced people.

We also note Section 6 of the Social Security (Scotland) Act 2018, regarding provision of independent information, advice and advocacy. In particular, we draw the Committee's attention to part 3 which requires that the support available is accessible and proportionate to the needs of the individuals to whom it is given, and the following matters in particular:

- (a) how to apply for assistance,
- (b) the process by which entitlement to assistance is determined,

- (c) the types of assistance available,
- (d) income maximisation,
- (e) the content of the Scottish social security charter.

Who Cares? Scotland provides independent advocacy, rights information, and signposting for Care Experienced people of all ages via our National Advocacy Helpline, and for Care Experienced children and young people via local provision. We know from our experience that Care Experienced people have a particular need for specialist advocacy and information services that understand the specific entitlements to them, as a previously Looked After Child.

For example, we often hear from members that employees at general services, such as a Job Centre, were not aware of supports relevant to them, such as Council Tax Exemption, or the Job Start Payment criteria for Care Leavers. We have also been contacted by Care Experienced adults who have received poor service from general services because they have not understood what it meant to be Care Experienced, or how challenges and trauma associated with this might continue to impact on someone's life.

“My experience of transitioning to adult services was very poor. It felt as though accessing support was made purposely difficult, I witnessed a lot of people fall through the cracks in this transition.”

Care Experienced participant, Summer of Participation 2023

For Care Experienced parents of any age, fear of prejudice and additional scrutiny stops many from seeking help from general services, or disclosing that they were in care as a child. Our Summer of Participation, 2023 research, found that 50% of Care Experienced adults had felt stigmatised when accessing services, and our work with Care Experienced parents in 2022 reported that 2/3 of Care Experienced parents felt uncomfortable to ask for support from services/professionals. These barriers prohibit many Care Experienced people from receiving support available and intended to benefit them.

“I never told anyone or talked about it until around 40 years after I left care. I was very aware of the dangers, restrictions and prejudices that the care experienced “label” would carry.”

I think a lot of people don't understand why I get some support that they would never access. People believe that you don't deserve it just because you happen to be care experienced without understanding what it means to be care experienced.”

Care Experienced participants, Summer of Participation 2023

Finance and poverty is a significant issue for our members, with finance-related issues accounting for 47% of calls to our Helpline, 01/01/2022 to 31/12/2023. These frequently relate to issues accessing or navigating social security, appealing decisions, proving entitlement to financial assistance such as the Care Experienced Bursary, and support with managing debt. We also note the Scottish Government's commitment to a challenge process that is 'as simple and straight

forward as possible' for anyone who believes Social Security Scotland has not made the right determination. We would expect that if the Care Leaver Payment is not administered by Social Security Scotland, Care Experienced people can still access a simple and free appeals process, with independent advocacy is available from providers who are knowledgeable about Care Experience and the policy area.

“Evidence shows that the disadvantages Care Experienced people face are specific in nature. Inequalities for Care Experienced people stem not only from the pre-existing disadvantages which may bring them into contact with the care system, but also as a result of direct and indirect discrimination in the practices of public authorities. Their specific disadvantage necessitates specific recognition”

Dr David Scott, 2023, p20.

We, therefore, recommend that the Bill expands on the requirements noted under section 6 of the 2018 Social Security (Scotland) Act, to require that advocacy and information services, with specialist knowledge and trauma-informed practice, are available for Care Experienced people, specifically to support them to access social security, navigate processes and challenge decisions, without experiencing stigma or prejudice, or misinformation.

“Not everyone who uses services will have a thorough understanding of their options or decisions that are made for them. It is so important that individuals are given the opportunity to make informed decisions or to have consolidated understanding of decisions that are made for them.

Care Experienced participant, Summer of Participation 2023

Q3: [Does Who Cares? Scotland believe that] Care Experience Assistance ought to be delivered by Social Security Scotland and subject to the statutory social security principles or should it be, as drafted in the Bill, left open to the possibility of delivery by other agencies, such as local authorities?

We support the Bill as drafted, leaving the possibility of delivery by other agencies, such as local authorities.

From our advocacy work and National Advocacy Helpline, we hear often that Care Experienced people have missed out on support they were entitled to, such as the Council Tax Exemption, because they were unaware of the support and how to claim for it. If the Care Leaver Payment also relies on Care Experienced young people knowing about the grant, and also being able to complete the application process to receive it from Social Security Scotland, this will automatically exclude many from benefitting. For example, the [Scottish Government recently urged](#) teen carers to apply for the Young Carers Grant, noting government figures that suggested around 25% of those eligible for the

grant in 2022-23 did not apply. Reasons for this may include a lack of knowledge about the grant or their eligibility, digital poverty, low literacy levels and bureaucracy fatigue.

“I felt there was no one there to listen to me or advocate for my rights, I was overwhelmed already trying to manage independent life in lieu of any support and I simply didn't have the time, strength or experience to articulate myself in a way that would be listened to.”

Care Experienced participant, Summer of Participation 2023

We believe that a duty on local authorities, to apply on behalf of a young person who is leaving their care and ensure that they have a bank account and receive the payment, would be a more reliable method of ensuring that all those who are entitled actually receive the support. Social work departments know when a young person is leaving their care and would be able to build in step into the discharge process to ensure the young person has received their grant. Young people leaving care is monitored and reported on via annual national statistics. The success of the roll out of the scheme would be able to be mapped against these figures for each local authority.

However, we would also support a route for any Care Experienced person, who would have been eligible for the payment and did not receive it at the time of leaving care, to be able to apply retrospectively for the payment, irrespective of age, income, etc.

“I was incredibly disappointed to find out at the age of 26 that I could have had help to navigate the homeless system, to get into uni, to stay in it etc.”

Care Experienced person, Summer of Participation 2023

Our 2023 Summer of Participation research found that 2 in 3 Care Experienced people had a negative experience leaving care, and 83% of respondents thought Care Experienced people of all ages should get extra protection for their rights in law. It is important that protection is offered to young people who might miss out on the payment due to implementation challenges, or any challenges arising from living in a local authority that is not their parent authority, for example.

“Consistency can only come with legal binding agreed parameters. Legal duty brings legal responsibility.”

Care Experienced participant, Summer of Participation 2023

Who Cares? Scotland welcomes the development of the Care Leaver Payment for our members, but it will only be as effective for the community as its implementation and guidance requires it to be. The Social Justice and Social Security Committee's scrutiny of the Bill's regulation making powers have a key role in ensuring the payment is as accessible to all Care Experienced young people. We welcome your support in addressing the additional challenges and financial hardship Scotland's Care Experienced young people continue to face.