

**Scottish Carer's Assistance consultation – Scottish Government  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1. Executive Summary**

- 1.1. It will be very important to raise awareness of the fact that Scottish Carer's Assistance is taxable, and that it is counted as income for the purposes of entitlement to tax credits and means-tested benefits. It will also be important to explain to recipients how any tax due is collected. If Social Security Scotland do not operate Pay As You Earn on Scottish Carer's Assistance and do not issue the equivalent of a P60 after the end of the tax year, then claimants could easily be confused as to whether the benefit is taxable. They may also find it difficult to calculate the exact amount of Scottish Carer's Assistance they have received in a tax year. We recommend the provision of clear information to claimants on taxable amounts of Scottish Carer's Assistance and the amounts they need to declare for the purposes of tax credits and means-tested benefits.
- 1.2. The introduction of Scottish Carer's Assistance provides Scottish Government with the opportunity to ask HMRC to include Scottish Carer's Assistance at Statement A and Statement B of the Starter Checklist to ensure the correct tax treatment of Scottish claimants who start a new employment while claiming Scottish Carer's Assistance or after having claimed Scottish Carer's Assistance prior to starting the job.

- 1.3. We think there need to be improvements to council tax guidance that aims to support unpaid carers and also awareness-raising campaigns in relation to eligibility for council tax discounts and the possibility of backdating discounts to the date that qualifying conditions were met.
- 1.4. Regardless of whether the Scottish Government increase the earnings limit for Scottish Carer's Assistance in comparison with Carer's Allowance, it is important to ensure that there is good, clear and comprehensive guidance to make claimants aware of the deductions that can be made when working out their earnings for this limit.

## **2. About Us**

- 2.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2. LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3. Introduction**

- 3.1. We welcome the opportunity to respond to the Scottish Government consultation on Scottish Carer's Assistance. We have previously submitted responses to consultations and calls for evidence on Carer's Allowance Supplement. We are tax specialists with expertise in the tax and related welfare systems, focusing on issues affecting those on low incomes and other vulnerable groups, including unpaid carers.
- 3.2. We have only answered questions within the area of our expertise.

## **4. Q15: Please give us any other views you want to share on the proposals for Scottish Carer's Assistance when it is first launched.**

- 4.1. As set out in Annex B of the consultation document, UK Carer's Allowance is taxable. The consultation states that Scottish Carer's Assistance will also be a taxable benefit. In addition, like UK Carer's Allowance it will be counted as income for the purposes of entitlement to means-tested

benefits and tax credits. In this respect, it will differ from Scottish Carer's Allowance Supplement, which although taxable is not taken into account as income for the purposes of entitlement to means-tested benefits and tax credits.

- 4.2. The reasons for the benefits treatment of Carer's Allowance Supplement were set out in the August 2016 Fiscal Framework agreement between the UK and Scottish Governments. This said that "any new benefits [...] introduced by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction by the UK government in their entitlement elsewhere in the UK benefits system." (Paragraph 89)<sup>1</sup>
- 4.3. The agreement goes on to say, "Any new benefits [...] introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed taxable such as Carer's Allowance." This seems at odds with the fact that Scottish Carer's Assistance will be taxable, as it is replacing rather than supplementing UK Carer's Allowance. However, we can see there may be some practical advantages of making the tax and benefits treatment the same as those for Carer's Allowance.
- 4.4. As Scottish Carer's Assistance will be taxable, we would welcome confirmation that in due course steps will be taken to amend current UK legislation to reflect this. It will be necessary to provide for the taxable nature of Scottish Carer's Assistance in section 660 of the Income Tax (Earnings and Pensions) Act 2003.
- 4.5. Similarly, it would be helpful to know that UK legislation will be amended to provide for the fact that, according to the consultation document, Scottish Carer's Assistance will be counted as income for the purposes of entitlement to means-tested benefits and tax credits. The rules covering the treatment of income for tax credits are found in the Tax Credits (Definition and Calculation of Income) Regulations 2002 and it seems likely that an appropriate amendment in regulation 7 would be required if the intention is for Scottish Carer's Assistance to be treated as income for tax credits. It will also be necessary to amend Universal Credit (UC) legislation to give effect to the decision that Scottish Carer's Assistance is to be taken into account as income (presumably unearned income, akin to the current treatment of Carer's Allowance). We would expect it to be listed in regulation 66 of the Universal Credit Regulations 2013. Other social security legislation may require amendments in respect of other means-tested benefits.
- 4.6. For the purposes of reporting benefits income, award letters for Scottish Carer's Assistance need to be clear in terms of setting out the payment amount and what the claimant needs to report for benefits and tax credits purposes. There will also need to be clear and comprehensive guidance on mygov.scot.
- 4.7. As Scottish Carer's Assistance will be taxable, it will be very important to raise awareness of this. It will also be important to explain to recipients how any tax due is collected. As Scottish Carer's

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<sup>1</sup> <https://www.gov.scot/publications/agreement-between-scottish-government-united-kingdom-government-scottish-governments-fiscal/>

Assistance is neither savings nor dividend income, in the hands of Scottish taxpayers (as defined by the Scotland Act 1998<sup>2</sup>), it will be subject to Scottish income tax.

- 4.8. The fact that the Department for Work and Pensions (DWP) does not operate Pay As You Earn (PAYE) on Carer's Allowance causes misunderstanding. Claimants often do not realise that it is taxable because they think that if it were, tax would be deducted at source. While the income from Scottish Carer's Assistance when it is introduced will be below the personal allowance (£12,570 in 2022/23), this does not mean that a claimant does not need to pay tax. If a claimant has other income, for example, from employment, self-employment or investments, their total taxable income may exceed the personal allowance, meaning that it is necessary for them to let HMRC know about their income from Scottish Carer's Assistance.
- 4.9. If the claimant has a PAYE source of income, for example from employment, then HMRC may adjust their PAYE tax code and collect any tax due on the Scottish Carer's Assistance through PAYE. This does not always work well. For example, the figure for Scottish Carer's Assistance included in the PAYE tax code may not end up being the actual figure the claimant receives in respect of the tax year. This would mean HMRC have to reconcile the tax after the end of the tax year, and any underpayment or overpayment of tax would be resolved a few months after the end of the tax year. In addition, in our experience, people can find it difficult to understand and check their PAYE tax code, particularly if it contains adjustments to collect tax on other sources of income.
- 4.10. The ideal solution would be for Social Security Scotland to operate PAYE on Scottish Carer's Assistance. In many cases, it might be unnecessary to actually deduct tax. But where it is necessary to do so, this would make it simpler for claimants.
- 4.11. If the claimant does not have another PAYE source of income and PAYE is not operated on Scottish Carer's Assistance, but the claimant nevertheless has to pay tax, they will need to report the Scottish Carer's Assistance income to HMRC. HMRC may require the claimant to complete Self Assessment tax returns. This can be burdensome, especially if the tax liability is relatively small. The completion of a Self Assessment tax return will require the claimant to insert the amount of Scottish Carer's Assistance they were due to receive in respect of the tax year. Not all claimants will realise they need to do this. For those that do, they could easily insert the incorrect amount if they are relying on using bank statements to obtain the relevant information. This can be a particular issue with weekly payments, as it would be easy to make transpositional or arithmetical errors when adding amounts up. Furthermore, the amount actually received during a tax year might not be the taxable figure, as taxable social security income should be reported on an accruals basis, not a receipts basis.<sup>3</sup>
- 4.12. An alternative solution to the operation of PAYE might be for the award letter to state clearly that the benefit is taxable and include an example of how tax might be collected. It would be helpful if this could be coupled with the provision of a P60 type statement after the end of the tax year,

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<sup>2</sup> S. 80D – 80F Scotland Act 1998 <https://www.legislation.gov.uk/ukpga/1998/46/contents>

<sup>3</sup> S. 661 Income Tax (Earnings and Pensions) Act 2003:  
<https://www.legislation.gov.uk/ukpga/2003/1/section/661>

showing the taxable amount of Scottish Carer's Assistance that the claimant was due to receive. This means that even if Social Security Scotland has not deducted tax at source, the claimant has the necessary information to allow them to check their PAYE tax code or to complete their Self Assessment tax return. For those who have to complete a Self Assessment tax return, it might be helpful if the Scottish Carer's Assistance figure could be pre-populated. If this were done, there will need to be a clear process for the claimant to challenge or override the pre-populated figure in case of error.

- 4.13. Another option might be for Scottish Carer's Assistance to fall within the remit of Simple Assessment.<sup>4</sup> This is a way for people to pay income tax that could not be automatically taken out of their income. It would require Social Security Scotland to send data to HMRC, in the same way that the Department for Work and Pensions does with the state pension. If the claimant has straightforward tax affairs, HMRC could send them a Simple Assessment in order to ensure the correct tax is paid, rather than requiring the claimant to complete a full Self Assessment tax return.
- 4.14. Another issue that we come across relates to the Starter Checklist, which individuals have to fill in when they start a new job if they do not have a P45 from a previous job.<sup>5</sup> The correct and timely completion of the Starter Checklist aims to ensure that HMRC provide the employer with the correct PAYE tax code. Carer's Allowance should be listed as one of the benefits at Statement A and Statement B on the Starter Checklist, but it is not. This means that a claimant may complete the Starter Checklist incorrectly when starting a new job, meaning that their PAYE tax code is incorrect. We have previously asked HMRC to amend the Starter Checklist to include reference to Carer's Allowance. The introduction of Scottish Carer's Assistance provides Scottish Government with the opportunity to ask HMRC to include Scottish Carer's Assistance at Statement A and Statement B to ensure the correct tax treatment of Scottish claimants.
- 4.15. There is no mention of council tax in the consultation document. Council tax bills are generally based on the assumption that there are at least two adults living in the property. If only one person or no one lives in the property (or it is treated as such), then the bill can be reduced. Certain groups of people are 'disregarded' or treated as not living in the property when calculating council tax – these include carers in certain circumstances. These discounts can be valuable to unpaid carers and the people they are caring for, yet the information on mygov.scot is not detailed or comprehensive enough to make unpaid carers aware that they may be eligible to apply for a discount.<sup>6</sup> It reads "Discounts for single person households, disabled people and students as well as some other groups exist, which may allow people in those groups a discount on their council tax bill." And later "If you or someone you live with are severely mentally impaired, you may be exempt from paying council tax." It is only if you go to an individual council website that you can find more detailed information,

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<sup>4</sup> <https://www.litrg.org.uk/tax-guides/tax-basics/what-simple-assessment>

<sup>5</sup> <https://www.gov.uk/government/publications/payee-starter-checklist>

<sup>6</sup> <https://www.mygov.scot/council-tax/discounts-exemptions-and-reductions>

for example on the East Lothian council website.<sup>7</sup> We are therefore concerned that some unpaid carers could be missing out on a discount to which they are entitled and which could make a real difference to their financial position. It is our understanding that there is no limit to how far a discount can be backdated. We think that guidance aimed at supporting unpaid carers needs to be improved. Together with the introduction of Scottish Carer's Assistance, there could also be awareness-raising campaigns in relation to eligibility for council tax discounts and the possibility of backdating discounts to the date that qualifying conditions were met.

**5. Q. 18: Please give us any other views you want to share on the proposals for Carer's Allowance Supplement.**

- 5.1. Carer's Allowance Supplement is taxable, but is not taken into account when determining entitlement to means-tested benefits or tax credits.
- 5.2. As the benefits treatment of Carer's Allowance Supplement will not be aligned with that of Scottish Carer's Assistance, it could prove very confusing if recipients receive one amalgamated payment. We acknowledge the value of regular payments in assisting people with regular budgeting. If payment of Carer's Allowance Supplement moves to a monthly or weekly basis, we think it should be a separate payment from Scottish Carer's Assistance, to try to reduce confusion for claimants.
- 5.3. Moreover, this makes it even more important to provide claimants with a P60 type statement at the end of the tax year for each of Scottish Carer's Assistance and Carer's Allowance Supplement to assist them when reporting income to HMRC for tax purposes. In addition, for the purposes of reporting benefits income, award letters for each need to be clear in terms of setting out the payment amount and what the claimant needs to report for benefits and tax credits purposes. There will also need to be clear and comprehensive guidance on mygov.scot.

**6. Q25: Please give us any other views you want to share about the proposed Carer's Additional Person Payment.**

- 6.1. We note that the tax status of the proposed Carer's Additional Person Payment has yet to be agreed. However, in line with the Fiscal Framework agreement between the UK and Scottish Governments, the payment will not be counted as income for the purposes of entitlement to other means-tested benefits or tax credits.
- 6.2. It should be noted that in general, where a benefit is taxable, it is usually counted as income for the purposes of entitlement to other means-tested benefits and tax credits. Conversely, where a benefit is not taxable, it is not generally counted as income for the purposes of entitlement to other means-

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[https://www.eastlothian.gov.uk/info/210559/council\\_tax\\_and\\_benefits/12137/apply\\_for\\_a\\_discount\\_or\\_exemption](https://www.eastlothian.gov.uk/info/210559/council_tax_and_benefits/12137/apply_for_a_discount_or_exemption)

tested benefits and tax credits (although there are exceptions). The proposed Scottish Carer's Assistance will follow this general theme, as does Carer's Allowance. However, Carer's Allowance Supplement does not – it is taxable, because in accordance with the Fiscal Framework agreement it has to follow the tax treatment of Carer's Allowance; however, in order to meet the benefits requirements of the Fiscal Framework agreement, it is not counted as income for the purposes of entitlement to other means-tested benefits and tax credits.

- 6.3. At the time of consultation on and development of Carer's Allowance Supplement, we wrote to the Scottish Government about the importance of communications in respect of that benefit. This was because of the conflict between the normal rules for determining income for tax credits and the commitment in the Fiscal Framework. In the instance of the proposed Carer's Additional Person Payment, communications about tax status and treatment for benefits purposes will also need to be clear and effective, particularly if there is divergence from the treatment of Scottish Carer's Assistance.
- 6.4. If Carer's Additional Person Payment is taxable, we recommend that awareness is raised of its taxable status and also how tax on it is collected. Ideally, recipients should receive a P60 type of statement at the end of the tax year setting out the taxable amount of benefit they were due to receive during the tax year. As with Scottish Carer's Assistance, this benefit would be subject to Scottish income tax if taxable, as it would not fall within the definition of savings or dividend income.

**7. Q34: Do you agree or disagree with the proposed future change to increase the earnings limit for Scottish Carer's Assistance? [Agree, Disagree, Unsure.] Q.35: Please write the reason why you agree or disagree with the proposed future change to increase the earnings limit for Scottish Carer's Assistance, or any other information you want to share on this question.**

- 7.1. Agree.
- 7.2. We have previously asked the UK Government to raise the Carer's Allowance earnings threshold automatically with the uprating of the National Minimum Wage (NMW). This would allow more carers to work part-time while remaining eligible for Carer's Allowance.
- 7.3. Prior to the significant increase in the NMW rate a few years ago, it was possible for carers to work 16 hours a week at the NMW and claim both Carer's Allowance and tax credits.<sup>8</sup> When the NMW increased such that a carer could not work 16 hours without exceeding the earnings limit for Carer's Allowance, some carers would have had to choose between: continuing to work 16 hours, losing their Carer's Allowance and remaining eligible for working tax credit; or cutting their hours to maintain eligibility for Carer's Allowance, but losing eligibility for working tax credit. An increase in the earnings limit for Scottish Carer's Assistance is likely to relieve that specific issue but higher earnings will, in most cases, lead to a reduced tax credit award and there will always be a point at which the carer will need to decide their best options to accommodate both their caring duties and

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<sup>8</sup> Note that Carer's Allowance reduces tax credits as it is taken into account as income.

their capacity for paid work. In this case, it is important that there is clear and comprehensive guidance available to assist with decision-making.

- 7.4. An increase in the earnings limit may encourage unpaid carers to work more hours. As Scottish Carer's Assistance will be taxable, this makes it more likely that they will have to pay income tax on some of their income. If they are in receipt of tax credits, they might not see the full increase from their earnings, as there is a 41% taper rate. Tax credits entitlement looks at the claimant's gross income and so does not take into account any income tax or National Insurance that the claimant pays on the earned income.
  - 7.5. In addition to increasing the earnings limit, it is important to ensure that there is good, clear and comprehensive guidance to make claimants aware of the deductions that can be made when working out their earnings to compare to the limit.
  - 7.6. For example, one of the allowable deductions is 'an expense that is not repaid to an employee by the employer if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred'. The type of expenses that qualify, such as professional subscriptions and specialist clothing, are also deductible for income tax purposes and in our experience, are quite commonly incurred.
  - 7.7. Likewise, half of any contributions that people make into their work or personal pension can be deducted from their earnings when assessing whether the earnings limit applies. One way for them to join a pension scheme is via their employer. All employers have to enrol eligible staff into a workplace pension scheme under the auto-enrolment programme. On weekly pay of less than £192, an employer does not need to automatically put someone into a workplace pension scheme. However, the employee can ask their employer to join the scheme.
  - 7.8. Simply raising awareness of these deductions may allow more carers to work part-time and still be eligible for support.
  - 7.9. Also, if a claimant's earnings do go above the threshold, it may be possible to see this from HMRC's PAYE real-time information data. At this point, we think there could be some type of automated prompt/review of the person's Scottish Carer's Assistance position, so that people can check whether there are any deductions to be made. This could prevent large overpayments building up.
- 8. Q36: Do you agree or disagree that the earnings threshold should be set at a level which would allow carers to work 16 hours a week alongside their caring role? [Agree, Disagree, Unsure.] Q.37: Please write the reason why you agree or disagree that the earnings threshold should be set at a level which would allow carers to work 16 hours a week alongside their caring role, or any other information you want to share on this question.**
- 8.1. Agree.
  - 8.2. We agree as, at the present time, people on low incomes may need to work 16 hours a week to claim working tax credit.



- 8.3. Although the consultation mentions potential interactions with tax credits, these should not be insurmountable. Scottish Carer's Assistance will be treated as income for tax credits purposes, but people will usually be better off after making a claim because the amount of Scottish Carer's Assistance paid should be greater than any drop in tax credits due to the 41% taper rate. People do, however, need to be advised to tell HMRC about any Scottish Carer's Assistance they are getting so that their tax credits award can be adjusted accordingly.
- 8.4. Tax credits are being phased out over the next few years and are being replaced by UC. We would have thought that the interactions with UC are more complex.
- 8.5. For example, the consultation document states that Scottish Carer's Assistance will be counted as income for UC purposes. We would therefore expect Scottish Carer's Assistance to reduce a person's UC award by £ for £. Someone with caring responsibilities may also qualify for the carer's element of UC. Currently you get this if you meet certain requirements even if you do not apply for Carer's Allowance. The Scottish government should do everything it can to encourage people who are entitled to it, and for whom it is appropriate, to claim this help in UC. Currently, people need to be careful about claiming Carer's Allowance where the person being cared for is getting a severe disability premium in their benefit, as they could lose that premium. We understand that there are also various complexities to consider when looking at Carer's Allowance and the carer's element of UC including how they interact with other elements in UC and other benefits. There are also different rules in respect of national insurance credits and backdating between Carer's Allowance and the carer's element of UC. On the assumption that similar issues will arise with Scottish Carer's Assistance, it will be important to provide signposting to advice. This should aim to ensure that what people are claiming is appropriate and that there are no unforeseen consequences.
- 8.6. In summary, people will need to be given good information and support to successfully navigate their way through the Scottish Carer's Assistance/UC landscape.
- 8.7. To get UC, people are expected to earn a certain amount depending on their ability to work (although there is no hours threshold in UC like there is in tax credits) or meet certain other work-related conditions, known as requirements.
- 8.8. If you have 'regular and substantial caring responsibilities' for a severely disabled person, the requirements can be flexed. As such, Scottish carers in receipt of Scottish Carer's Assistance may have to rely on the judgement of UC decision makers when having their ability to work assessed. This adds a substantial degree of uncertainty and is a point of concern if the decision makers do not have the expertise and understanding to discharge the task assigned to them. It is therefore vital that UC decision makers are given appropriate training and guidance around carers as this will ensure those with caring responsibilities are treated appropriately, taking their particular circumstances into consideration.
9. **Q38: Do you agree or disagree with the proposal to look at a 'run on' after a carer earns over the earnings limit in future? [Agree, Disagree, Unsure.] Q.39: Please write the reason why you agree or**

**disagree with the proposal to look at a 'run on' after a carer earns over the earnings limit in future, or any other information you want to share on this question.**

- 9.1. Agree.
- 9.2. Currently there is a cliff edge which means that people miss out on Carer's Allowance if their earnings exceed the threshold by just £1. People will need to be aware that the run on is taxable and is counted as income for tax credits and means-tested benefits.
- 9.3. When looking at the operation of a run on period, it would be helpful if the claimant could simply resume their full entitlement to Scottish Carer's Assistance if their earnings dropped again during the run on period, rather than having to make a new claim. This is more important than previously given the labour market has seen a reduction in permanent, direct employment and a growth in flexible work, temporary roles, sub-contracting, zero hours contracts, etc. Wages may often be unpredictable and can fluctuate significantly.

LITRG  
19 May 2022