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The Scottish Parliament
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03 March 2023

Dear Natalie,

The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

I wrote to the Committee on 7 February this year to update on progress made on the delivery of Carer Support Payment (formerly Scottish Carer's Assistance) which will replace Carer's Allowance in Scotland, following the [public consultation](#) which ran from February to May 2022 and the subsequent publication of the [independent analysis](#) of consultation responses.

I am pleased to inform the Committee that today the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 have been referred for scrutiny to the Scottish Commission on Social Security (SCoSS). Please find attached draft regulations and accompanying documentation sent today to the co-Chairs of SCoSS, Dr Mark Simpson and Judith Paterson.

This is an important milestone in our work to deliver Carer Support Payment, building on the improvements we have made to support for carers through our Carer's Allowance Supplement and Young Carer Grant. Social security has a key role to play in achieving our overall vision for Scotland's carers – that they are supported in a meaningful and sustainable way, so they can work, engage in education and have full lives away from caring, if that is their wish.

From launch, Carer Support Payment will provide a simple and accessible service, designed with carers and support organisations to meet their needs, and to help link carers to wider support. To protect the safe and secure transfer of benefits for carers already receiving Carer's Allowance and avoid a two-tier system where some carers are disadvantaged, eligibility and rules for Carer Support Payment will be broadly in line with Carer's Allowance when it is first introduced.

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This is especially important for Carer Support Payment because of the complex links Carer's Allowance has with wider support, including benefits that remain reserved to the UK Government. We have been working closely with the Department for Work and Pensions to make sure we design and deliver Carer Support Payment in a way that will protect the linked support that carers rely on.

Following launch, we will continue to improve the support we provide to carers. We set out in our consultation a range of proposals for future improvement, and we are committed to increasing the 'run on' of support after a cared for person passes away and to providing extra support for those caring for more than one person, known currently as 'Carer's Additional Person Payment'. We will do this as soon as possible after case transfer from Carer's Allowance is complete. We are also continuing to consider when and how we may be able to change the Carer's Allowance education rules to increase access to support for carers who are studying full-time.

We will publish our response to the consultation in the coming weeks. This will provide a further update on our ongoing work to improve and expand access to this important benefit.

We are also continuing to work with the Department for Work and Pensions on delivering case transfer from Carer's Allowance to Carer Support Payment. This is a joint programme and a complex process, made more complex in this case by the age and structure of the Carer's Allowance systems that we will be transferring information from. We will transfer the benefits of carers safely and securely, and intend to do so in line with our published case transfer principles, and the approach we have taken to date for the disability benefits. We are working closely with the Department for Work and Pensions to ensure this can be supported by Carer's Allowance systems.

I would like to thank the Committee for your co-operation and support throughout the development of Carer Support Payment to date, and in advance for ensuring the regulations put forward are appropriately scrutinised.

I look forward to discussing further when engaging with the Committee on these Regulations in due course. My officials and I would be happy to provide any further information that Members might require to aid the Committee's consideration.

Best regards,



BEN MACPHERSON



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03 March 2023

Dear Mark and Judith,

I am pleased to provide you with the draft Carer's Assistance (Carer Support Payment)(Scotland) Regulations 2013, made under section 96(2) of the Social Security (Scotland) Act 2018, for scrutiny.

Introducing Carer Support Payment is an important milestone in the devolution of carer benefits and improving support for Scotland's unpaid carers, following the introduction of Carer's Allowance Supplement, Young Carer Grant, and the extra coronavirus payments made in 2020 and 2021. Social security is a key part of the work to deliver on the Scottish Government's vision to support carers in a meaningful and sustainable way, so they are able to work, engage in education and have full lives away from caring, if that is their wish.

On introduction, Carer Support Payment will provide an improved, more accessible service to carers, joining up with other services to help carers access information on the wide range of support available to them. Entitlement will broadly mirror Carer's Allowance to allow us to safely and securely transfer the awards of people in Scotland receiving Carer's Allowance from the Department for Work and Pensions to Social Security Scotland and on to Carer Support Payment. This will avoid a 'two tier system' where carers on the two benefits would be treated differently for a period.

Carer's Allowance is the most complex benefit we are replacing in terms of the links it has with other support, including support that will remain reserved to the UK Government. We are working closely with the Department for Work and Pensions in particular, and with other UK Government departments, on the design and development of Carer Support Payment so we can deliver this in a way which protects any linked support that carers rely on.

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Public consultation

We consulted from February to May 2022 on proposals for how our replacement for Carer's Allowance should work on launch. Proposals were developed following a range of work and research with carers, support organisations, our Carer Benefits Advisory Group, and advice from the Disability and Carer Benefits Expert Advisory Group. Around 200 responses were received, and the independent analysis of these, published in November 2022, showed the proposals were broadly supported by a majority of respondents. Research with our Experience Panels was carried out alongside the consultation, with 242 members responding to a survey, and 16 follow up interviews undertaken.

People responding to both the consultation and Experience Panels research were positive about the proposals set out, and felt in general these reflected a more flexible and person-centred approach to support compared to the current benefit. Responses were positive about aligning the approach on residence and re-determinations with the devolved disability benefits, and about the use of 'nil rating' to prevent overpayments and the need for carers to re-apply for support following temporary gaps in entitlement.

Responses on the question of the 'past presence test' were largely in favour of a reduced requirement for past presence compared with Carer's Allowance. The draft regulations provide for this reduced test (Regulation 6) which will allow carers coming to Scotland from outside the Common Travel Area to access support sooner, and in line with the people they care for, given the test in place for our disability benefits. These regulations are included as provisional at this stage as we are considering whether this can be implemented from pilot launch.

A majority of those responding to the consultation were also in favour of changing the *education restrictions* currently in place in Carer's Allowance, which was consulted on as a potential future change to eligibility. The regulations referred today reflect the current Carer's Allowance rules but I would note that these are provisional as we are continuing to work to consider when and how we may be able to make changes to the current rules to improve access to Carer Support Payment for carers in education.

Draft regulations

The provisions in the draft regulations ensure that eligibility and rules for Carer Support Payment will broadly align with Carer's Allowance, while providing consistency with our devolved benefits, and the principles set out in the Social Security (Scotland) Act 2018. Further background on some of the provisions is provided below, and additional information is provided in the policy note included with the regulations.

Earnings rules

Rules about how much carers can earn from paid work while receiving Carer Support Payment will mirror Carer's Allowance from launch, including the calculation of earnings, and the draft regulations set out the earnings rules at a high level (Regulation 14). Detail on how earnings are calculated for Carer's Allowance is set out in separate regulations which cover other benefits. For Carer Support Payment, we intend to set out this kind of detail in the schedule but are considering the best approach to this to ensure sufficient clarity and transparency, while maintaining flexibility and ensuring alignment with how the Department for Work and Pensions regulations work in practice for Carer's Allowance. As this consideration is ongoing, I would be grateful for the Commission's flexibility in looking at the more detailed provisions in relation to the calculation of earnings at a later date.

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Abatement

Draft provisions (Regulation 17) are included to mirror the effect of the 'abatement' process used for Carer's Allowance within the Department for Work and Pensions. These are intended to address overpayments which could otherwise occur where carers are awarded Carer Support Payment while in receipt of reserved legacy benefits. These are provisional at this stage as this would be a new process for devolved benefits and work is ongoing to consider how this process could be delivered in practice between Social Security Scotland and the Department for Work and Pensions.

Advance applications

Draft provisions (Regulation 18) have been included to allow carers to claim Carer Support Payment up to 13 weeks in advance if they expect to become eligible in future. This is in line with Carer's Allowance, and our intention to mirror this was set out in the consultation. In referring these regulations we would note that the ability for carers to apply in advance will not be available during the pilot. Consideration is ongoing on when advance applications will be available from. This will reduce the complexity of systems and processes initially, and is not expected to have a significant impact on clients during this short period as systems will process applications more quickly than Carer's Allowance, and it will be possible for carers to 'backdate' applications. We would be grateful if we could also confirm these timescales with the Commission at a later date.

Pilot

Part 1 of the Schedule sets out our intention to provisionally implement a pilot launch of Carer Support Payment. This would be in line with previous rollouts of Child and Adult Disability Payments and would ensure a safe and secure delivery of a new service. We are working closely with local authority areas to consider potential pilot arrangements. We will confirm the arrangements to the Commission at a later date.

Transfer of benefits from Carer's Allowance to Carer Support Payment

I also include provisions on the transfer of assistance from Carer's Allowance to Carer Support Payment (case transfer) in Part 2 of the Schedule. As these provisions are made under section 95 of the Social Security (Scotland) Act 2018, they are not subject to formal scrutiny by the Scottish Commission on Social Security. I am, however, happy to provide a full copy of the draft Regulations to allow the Commission to consider those parts of the Regulations you are required to scrutinise in the context.

As you are aware, case transfer is a joint programme with the Department for Work and Pensions and a complex process, made more complex in this case by the age and structure of the Carer's Allowance systems that we are transferring information from. The case transfer provisions set out our intention for the overall approach to the Carer's Allowance to Carer Support Payment case transfer process and describe the key steps to ensure this process is safe and secure. We have flagged these as provisional at this stage as confirmation of the final approach is dependent on ongoing joint delivery work with the Department for Work and Pensions.

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Future developments

Proposals relating to short-term assistance received strong support in the public consultation. We plan to provide short-term assistance in some situations where a Carer Support Payment decision is being challenged, and support to carers when the person they care for is getting short-term assistance. However, we will now look to introduce this after case transfer is complete, and as such provision for this is not included in the current draft regulations. This is in part because it has not been possible to agree with the Department for Work and Pensions how short-term assistance provided to carers (or support based on short-term assistance paid to a cared for person) would be treated in reserved means-tested benefits. It would make carers no better off if support we provided during challenges was to reduce support they were receiving through Universal Credit or other Department of Work and Pensions benefits. Introducing this after case transfer completes will also ensure there is no difference in treatment for carers in Scotland who are already getting Carer's Allowance.

Future regulations will also provide for further changes we will introduce after case transfer completes, in particular the extension to the 'run on' of support provided to carers after the person they care for has died, and the extra support for those caring for more than one person, known currently as 'Carer's Additional Person Payment'. We will publish our response to the consultation in the coming weeks and provide further information on these changes and the work which will continue beyond the launch of Carer Support Payment to improve support for unpaid carers.

We are also refining the impact assessments which we have been developing alongside the policy and regulations, taking into account the response to the consultation, consultation events, Experience Panels and wider research, and will provide the most recent drafts in the coming weeks.

Conclusion

I ask that the Commission provide their scrutiny report on these regulations by 26 May 2023. If you are able to provide any recommendations at an earlier date, this would be helpful in ensuring that I have sufficient time to consider your recommendations before the regulations are laid in Parliament in September.

I have sent a copy of this letter and draft Regulations to the Social Justice and Social Security Committee, in order to notify them that our proposals have been submitted to the Commission.

Finally, I want to extend my thanks to the Commission for considering these regulations.

I recognise the Commission's vital role in scrutinising our proposals thus far and I thank you for your continued co-operation and support.

Yours sincerely,



BEN MACPHERSON

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

**The Carer’s Assistance (Carer Support Payment) (Scotland)
Regulations 2023**

Laid before the Scottish Parliament

2023

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28(2), 36(2),] 41(4)(a), 43(5), 51(1), 52, and 95 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the [Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023] and come into force on [XXX].

Interpretation

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“Adult Disability Payment” means disability assistance for adults given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022,

“award week” means a period of 7 days beginning on a Sunday and ending on a Saturday,

“cared for person” is a person described in regulation 5(1),

(a)

“carer element of Universal Credit” means the amount awarded under regulation 29 of the Universal Credit Regulations 2013^(a) or regulation 30 of the Universal Credit Regulations (Northern Ireland) 2016/216^(b),

“Carer’s Allowance” means a benefit for carer’s given under—

- (a) section 70 (invalid care allowance) of the Social Security Contributions and Benefits Act 1992^(c), or
- (b) section 70 (carer’s allowance) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,^(d)

“Carer Support Payment” means carer’s assistance given in accordance these Regulations,

“Child Disability Payment” means disability assistance for children and young people given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021,

“couple” means a married or an unmarried couple,

“disability benefit” means—

- (c) the daily living component of Adult Disability Payment at the standard or enhanced rate,
- (d) the daily living component of Personal Independence Payment,
- (e) the middle or highest care rate of Child Disability Payment,
- (f) the middle or highest care rate of Disability Living Allowance,
- (g) Attendance Allowance,
- (h) Armed Forces Independence Payment, or
- (i) Constant Attendance Allowance—
 - (i) at or above the normal maximum rate with Industrial Injuries Disablement Benefit, or
 - (ii) at the basic (full day) rate with a War Disablement Pension.

“Disability Living Allowance” means a disability living allowance under—

- (a) section 71 of the Social Security Contributions and Benefits Act 1992, or
- (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992^(e),

“determination” or “determination of entitlement” has the meaning in section 25 of the 2018 Act,

“EEA state” means—

- (a) any member state of the European Union, or
- (b) any other state that is party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time,

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995,

“partner” means where a claimant is a member of a married or an unmarried couple, the other member of that couple,

“Personal Independence Payment” means personal independence payment under—

- (a) Part 4 of the Welfare Reform Act 2012, or
- (b) Article 82 of the Welfare Reform (Northern Ireland) Order 2015,

(a)
(b)
(c) 1992 c. 4, relevantly amended by S.S.I. 2021/174 and S.S.I. 2022/54.
(d)
(e) 1992 c. 7.

“relevant EU Regulation” means—

- (a) One of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971(a) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the community,
 - (ii) Regulations (EC) No 883/2004 of the European Parliament and of the Council of 19 April 2004(b) on the coordination of social security systems, or
- (b) In relation to an individual to whom the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974 applies, a Regulation mentioned in paragraph (a) of this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018(c).

PART 2

Carer Support Payment

Overview

3. An individual is entitled to Carer Support Payment in accordance with these Regulations if they meet the eligibility rules in—

- (a) regulation 4 (age criteria),
- (b) regulation 5 (provision of care to a cared for person),
- (c) regulations 6 to 11 (residence and presence conditions),
- (d) regulation 12 (entitlement to other benefits),
- (e) regulation 13 (individuals in education), and
- (f) regulation 14 (earnings limit).

PART 3

Eligibility

Age criteria

4.—(1) Carer Support Payment may only be paid in respect of an individual who is 16 years of age or older.

(2) Where an individual was born on 29 February, the individual’s birthday is to be taken to fall on 28 February in a year which is not a leap year.

Provision of care to a cared for person

5.—(1) Carer Support Payment may only be paid to an individual in respect of a period during which that individual provides regular and substantial care to a person to whom a disability benefit is normally payable (“cared for person”).

(2) For the purposes of paragraph (1), an individual shall only be treated as being regularly and substantially engaged in caring for a cared for person on every day in an award week if they are,

-
- (a)
 - (b)
 - (c)

or are likely to be, regularly engaged for at least 35 hours per award week in caring for that cared for person.

(3) An individual is not entitled to Carer Support Payment in respect of a cared for person where another individual is entitled to—

- (a) Carer Support Payment,
- (b) Carer's Allowance, or
- (c) the carer element of Universal Credit,

in respect of that cared for person.

(4) The care must not be provided by the individual—

- (a) under or by virtue of a contract, unless the contract is of a kind specified by regulations under section 1(3)(a) of the Carers (Scotland) Act 2016 as not to be regarded as a contract for the purposes of that Act, or
- (b) as voluntary work done for a charity or other not-for-profit organisation for which no payment is received other than reasonable expenses.

(5) No individual can be entitled to more than one Carer Support Payment in respect of the same period.

(6) No individual can be entitled to Carer Support Payment in respect of a period during which they are in legal detention.

(7) For the avoidance of doubt, an individual may be entitled to Carer Support Payment in respect of a cared for person where another individual is entitled to Young Carer Grant for that cared for person.

Residence and presence conditions

6.—(1) An individual satisfies the residence and presence conditions where on any day that individual—

- (a) is ordinarily resident in Scotland,
- (b) is habitually resident in the common travel area,
- (c) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a),
- (d) is present in the common travel area,
- (e) [has been present in the common travel area for a period of, or for periods amounting in the aggregate to, not less than 26 weeks of the 52 weeks immediately preceding that day,]
- (f) in relation to Carer Support Payment, the United Kingdom is competent for payment of sickness benefits to the person for the purposes of Chapter 1 of Title III(b) of the relevant EU regulation.

(2) In this Part, "common travel area" has the meaning given in section 1(3) of the Immigration Act 1971.(c)

(3) The residence condition set out in paragraph (1)(a) does not apply where on any day the individual—

- (a) is habitually resident in Ireland,
- (b) has a genuine and sufficient link to Scotland, and
- (c) is an individual—
 - (i) to whom the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland

(a) 1999 c. 33.
(b)
(c)

signed at Dublin on 1 February 2019^(a), as modified from time to time in accordance with any provision of it, applies, and

- (ii) in respect of whom the United Kingdom is, as a result, competent for the payment of long term care benefits.

(4) The reference in paragraph (3)(b) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Carer Support Payment, paragraph (3) would be incompatible with the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019.

(5) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where the person—

- (a) is lawfully working in the United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union^(b) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,
- (b) is a member of the family of, and living with, a person specified in sub-paragraph (a), or
- (c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.

(6) The past presence condition in paragraph (1)(e) does not apply where an individual—

- (a) has a terminal illness, or
- (b) cares for a cared for person who—
 - (i) has a terminal illness, or
 - (ii) is not required to meet a past presence condition by virtue of an exception set out in—
 - (aa) regulations 2(a)(i) or 2C(1) of the Social Security (Attendance Allowance) Regulations 1991,
 - (bb) regulations 2(a)(i) or 2C(1) of the Social Security (Disability Living Allowance) Regulations 1991,
 - (cc) regulation 2A(1), 2B2, 2C(1) and 5 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992
 - (dd) regulations 22 or 23A(1) of the Social Security (Personal Independence Payment) Regulations 2013,
 - (ee) regulations 5(10)(b), 5(10A) or 8 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,
 - (ff) regulations 17(2) or 19 of the Disability Assistance for Working Age People (Scotland) Regulations 2022,
 - (gg) regulations [XX] of [XX] (exceptions to the past presence test in Constant Attendance Allowance regulations), or
 - (hh) regulations [XX] of [XX] (exceptions to the past presence test in Armed Forces Independence Payment regulations),

(7) For the purposes of paragraph (6), “terminal illness” means an individual or a cared for person who is entitled to—

- (a) Disability Living Allowance by virtue of regulation 2(4) of the Social Security (Disability Living Allowance) Regulations 1991,

(a)
(b)

- (b) Disability Living Allowance by virtue of regulation 2(3) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992,(a)
- (c) Attendance Allowance by virtue of section 66 of the Social Security Contributions and Benefits Act 1992.(b)
- (d) Attendance Allowance by virtue of regulation 2(3) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(c),
- (e) Personal Independence Payment by virtue of regulation 21 of the Social Security (Personal Independence Payment) Regulations 2013,(d)
- (f) Personal Independence Payment by virtue of regulation 21 of the Personal Independence Payment Regulations (Northern Ireland) 2016(e),
- (g) Child Disability Payment by virtue of regulation 15 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,
- (h) Adult Disability Payment by virtue of regulation 26 of the Disability Assistance for Working Age People (Scotland) Regulations 2022,

(8) The habitual residence condition in paragraph (1)(b) and the past presence condition in paragraph (1)(e) do not apply where an individual is a person who—

- (a) has leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—
 - (i) the Afghan Relocations and Assistance Policy, or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
- (b) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (a),
- (c) has leave granted under the Afghan Citizens Resettlement Scheme,
- (d) has been granted refugee status or humanitarian protection under the immigration rules,
- (e) has leave to enter or remain in the United Kingdom as the dependant of a person referred to in sub-paragraph (d),
- (f) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2(f) of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA(g) of that Act, where the individual—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022.

(9) For the purposes of paragraph (5)—

- (a) “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971,
- (b) “the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021.(h)

(a)
(b)
(c)
(d)
(e)
(f)
(g)
(h)

Temporary absence from the common travel area

7.—(1) Where an individual is temporarily absent from the common travel area, the individual is to be treated as present in the common travel area during the first—

- (a) 4 weeks of any period of absence,
- (b) 13 weeks of any period of absence where that period of absence, or any extension to that period of absence, is for the specific purpose of caring for a cared for person who is also absent from the common travel area and where that cared for person is paid a disability benefit during that period, or
- (c) 26 weeks of any period of absence where—
 - (i) that period of absence, or any extension to that period of absence, is in connection with arrangements made for the medical treatment of the cared for person for a disease or bodily or mental disablement which commenced before leaving the common travel area and where that cared for person is paid a disability benefit during that period, and
 - (ii) the arrangements relate to medical treatment—
 - (aa) outside the common travel area,
 - (bb) during the period when the cared for person is temporarily absent from the common travel area, and
 - (cc) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) For the purposes of paragraph (1)—

- (a) an individual is "temporarily absent" if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks, and
- (b) "medical treatment" means medical, surgical, psychological or rehabilitative treatment (including any course or diet regimen).

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8.—(1) A relevant individual is to be treated as meeting the residence and presence conditions set out in regulations 6(1)(a), (b) and (d) where on any day that individual is outside the common travel area—

- (c) by reason of their capacity mentioned in paragraph (3)(a) provided that the individual satisfied the residence and presence conditions set out in regulation 6(1)(a), (b) and (d) immediately prior to the start of their employment mentioned in paragraph (3)(a), or
- (d) by reason of being a person mentioned in paragraph (3)(b) living with an individual to whom paragraph (3)(a) applies.

(2) The past presence test set out in regulation 6(1)(e) does not apply to a relevant individual.

(3) A "relevant individual" in paragraph (1) and (2) means an individual who is—

- (a) outside of the common travel area in their capacity as a—
 - (i) serving member of His Majesty's forces, or
 - (ii) civil servant, or
- (b) living with a person mentioned in sub-paragraph (a) and—
 - (i) is the child, step-child or child in care of that person,
 - (ii) is the parent, step-parent or parent-in-law of that person, or
 - (iii) is married to or in a civil partnership with that person, or is living together with that person as if they were married or in a civil partnership.

(4) In this regulation—

"child in care" means—

- (a) under the law of Scotland, a child in respect of whom a relevant individual listed in paragraph (3)(a)—
 - (i) is a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,(a)
 - (ii) is a kinship carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,
 - (iii) has a kinship care order within the meaning of section 72 of the Children and Young People (Scotland) Act 2014,(b) or
- (b) under the law of England and Wales and Northern Ireland, a child in respect of whom a person listed in paragraph (3)(a) has a relationship equivalent to those listed under the law of Scotland,

“civil servant” has the meaning given by section 1(4) of the Constitutional Reform and Governance Act 2010,(c) and

"serving member of His Majesty's forces" means a member of a regular force or a reserve force ("M") as defined, in each case, by section 374 (definitions applying for purposes of the whole Act) of the Armed Forces Act 2006,(d) unless—

- (c) M is under the age of 16,
- (d) M is committing an offence under section 8 of the Armed Forces Act 2006 (desertion),
- (e) the force concerned is one of His Majesty's naval forces which M locally entered at an overseas base without—
 - (i) previously being an insured person under the National Insurance Act 1965, or
 - (ii) paying or having previously paid one or more of the following classes of contributions under the Social Security Act 1975(e) or the Social Security Contributions and Benefits Act 1992(f)—
 - (aa) primary Class 1,
 - (bb) Class 2, or
 - (cc) Class 3, or
- (f) the force concerned is one of His Majesty's military forces or His Majesty's air forces which M entered, or was recruited for, outside the United Kingdom and—
 - (i) where that force is one of His Majesty's military forces, the depot for M's unit is outside the United Kingdom, or
 - (ii) where that force is one of His Majesty's air forces, M is liable under the terms of M's engagement to serve only in a specified area outside the United Kingdom.

Aircraft workers, mariners and continental shelf operations

9.—(1) An individual is to be treated as meeting the presence conditions set out in regulation 6(1)(d) and (e) for any period where that individual is—

- (a) outside the common travel area in their capacity as an aircraft worker or a mariner, or
- (b) in employment prescribed for the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(g) in connection with continental shelf operations.

(2) In this regulation—

-
- (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft, and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person so far as that employment is as a serving member His Majesty’s forces, and

“mariner” means a person who is, or has been, in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (c) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passenger or cargo or mail carried by the ship or vessel, and
- (d) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,

but does not include a person in so far as that employment is as a serving member of His Majesty’s forces.

Persons residing in the United Kingdom to whom a relevant EU regulation applies

10. The past presence condition set out in regulation 6(1)(e) (residence and presence conditions) does not apply where on any day the individual is—

- (a) ordinarily resident in Scotland,
- (b) habitually resident in the United Kingdom,
- (c) an individual—
 - (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens’ rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020^(a) (“the 2020 Act”),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974,^(b)
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits.

Persons residing outside the United Kingdom to whom a relevant EU regulation applies

11.—(1) The residence and presence conditions set out in regulation 6(1) (residence and presence conditions) do not apply in relation to Carer Support Payment where on any day the individual satisfies the conditions in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the individual must—

- (a) be an individual—
 - (i) to whom the rules set out in a relevant EU regulation apply by virtue of—

(a)
(b)

- (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act"),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974, and
- (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits,
- (b) be habitually resident in—
- (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar, and
- (c) have a genuine and sufficient link to Scotland.

(3) The reference in paragraph (2)(c) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Carer Support Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in sub-paragraph (a)(i) of that paragraph.

(4) An individual to whom a relevant EU regulation applies is not entitled to Carer Support Payment for a period unless during that period the United Kingdom is competent for payment of sickness benefits to the person for the purposes of the relevant EU regulation in question.

Entitlement to other benefits

12.—(1) An individual is not entitled to Carer Support Payment in respect of a cared for person for any period that they are entitled to—

- (a) Carer's Allowance,
- (b) the carer element of Universal Credit in respect of a different cared for person, or
- (c) Young Carer Grant in respect of a different cared for person.

(2) An individual may be entitled to Carer Support Payment in respect of a cared for person where they have previously been entitled to Young Carer Grant in respect of that cared for person.

[Individuals in education

13.—(1) An individual is not entitled to Carer Support Payment if they are receiving full-time education.

(2) For the purposes of paragraph (1), an individual is to be treated as receiving full-time education for any period during which they attend a course of education at a university, college, school or other educational establishment for 21 hours or more per week.

(3) In calculating the hours of attendance under paragraph (2)—

- (a) time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum or course is to be included, and
- (b) time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment is to be excluded.

(4) In determining the duration of a period of full-time education under paragraph (2) of this regulation, an individual who has started on a course of education is to be treated as attending it for the usual number of hours per week throughout any vacation or any temporary interruption of

their attendance until the end of the course or such earlier date as they abandon it or are dismissed from it.]

Earnings limit

14.—(1) An individual is not entitled to Carer Support Payment in any award week in which their earnings in respect of that award week exceed £139.

(2) Earnings are to be calculated in accordance with [Part 3 of the schedule].

PART 4

Making of applications and payments and duration of eligibility

Making payments

15.—(1) Where Carer Support Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person.

Amount and form of Carer Support Payment

16.—(1) Subject to regulation 21 (amount and form of Carer Support Payment where payments are backdated), the weekly rate of payment of Carer Support Payment is £76.75.

(2) For any award week where an individual is entitled to one or more overlapping benefit, the amount of Carer Support Payment that is to be given to the individual is to be reduced—

- (a) by the amount of the overlapping benefit paid, or
- (b) where the amount of the overlapping benefit is equal to or greater than the amount of Carer Support Payment, the value of Carer Support Payment that is to be given to the individual is £0.

(3) In this regulation “overlapping benefit” means—

- (a) State Pension,
- (b) Incapacity Benefit,
- (c) Severe Disablement Allowance,
- (d) Unemployability Supplement that is paid with Industrial Injuries Disablement benefit or War Pension,
- (e) Widow’s Pension or Bereavement Allowance,
- (f) Widowed Mother’s Allowance or Widowed Parent’s Allowance,
- (g) War Widow’s or Widower’s Pension,
- (h) Maternity Allowance,
- (i) Industrial Death Benefit,
- (j) Contribution-based Job Seeker’s Allowance,
- (k) Contribution-based Employment and Support Allowance.

(4) When the cared for person dies, the individual’s entitlement to Carer Support Payment will continue to be paid—

- (a) until the first day of the award week following the award week in which the individual ceases to satisfy any other eligibility requirement set out in Part 3 of these Regulations, or

- (b) for a period of 8 award weeks after the first day of the award week following the award week in which the cared for person died, whichever occurs first.

(5) Carer Support Payment may only be given as money, except as provided for by—

- (a) regulation 17 (abatement in respect of a relevant individual), or
- (b) regulation 26 (form of payment – giving Carer Support Payment by way of deduction).

[Abatement in respect of a relevant benefit

17.—(1) This regulation applies where an individual—

- (a) makes an application for Carer Support Payment, or
- (b) becomes entitled to an increased amount of Carer Support Payment following a determination without application, and

that individual is [(or if they are a member of a couple, their partner is)] in receipt of a relevant benefit at any time during the abatement period.

(2) Where this regulation applies, Carer Support Payment may be given (in whole or in part) to the Secretary of State for Work and Pensions in order to meet, or contribute towards meeting, any liability the individual has to the Secretary of State for Work and Pensions in connection with a relevant benefit, provided that the individual has—

- (a) agreed to the assistance being given in that form, or
- (b) unreasonably refused to agree to the assistance being given in that form.

(3) The amount of Carer Support Payment that is to be given by way of payment to the Secretary of State for Work and Pensions in accordance with paragraph (2) is the difference between—

- (a) the amount of any relevant benefits the individual was entitled to immediately before the abatement period, and
- (b) the amount of any relevant benefits the individual was entitled to immediately after the abatement period,

which, for the avoidance of doubt, includes any carer premia the individual was entitled to in respect of those relevant benefits.

(4) For the purposes of this regulation—

“abatement period” means—

- (a) where sub-paragraph (1)(a) applies, a period, as short as reasonably practicable, beginning with the first day of the award week in which the individual’s entitlement to Carer Support Payment begins and ending with the first day of the award week in which the individual’s first payment of Carer Support Payment is made, or
- (b) where sub paragraph (1)(b) applies, a period, as short as reasonably practicable, beginning with the first day of the award week in which the individual’s entitlement to Carer Support Payment increases and ending with the first day of the award week in which the individual received the first payment of Carer Support Payment at that increased amount, and

“relevant benefit” means—

- (c) Income Support,
- (d) Income-based Jobseeker’s Allowance,
- (e) Income-related Employment and Support Allowance, or
- (f) Pension Credit.]

When an application is to be treated as made and beginning of entitlement to assistance

- 18.**—(1) An application for Carer Support Payment is to be treated as made—
- (a) on the day it is received by the Scottish Ministers, or
 - (b) [if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).
- (2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—
- (a) would not satisfy an eligibility requirement set out in Part 3 of these Regulations if the application were treated as made on the day it was received, and
 - (b) would likely be entitled to receive Carer Support Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,
- the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as made.]
- (3) Where, on the basis of an application, a determination is made that an individual is entitled to Carer Support Payment, entitlement to assistance is to begin—
- (a) on the first day of the award week in which the application is treated as made in accordance with paragraph (1),
 - (b) where paragraph (2) applies, on the day identified by the Scottish Ministers in accordance with that paragraph,
 - (c) on a date chosen by the Scottish Ministers up to a maximum of 13 weeks prior to the date on which the application is treated as made, provided the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that date, or
 - (d) where regulation 19 applies (applications made within 13 weeks of a qualifying benefit), a date to be chosen by the Scottish Ministers in accordance with that regulation.
- (4) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Carer Support Payment—
- (a) under paragraph (1)(a)—
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made, and
 - (b) [under paragraph (1)(b)—
 - (i) is deemed to begin on the day before the determination of entitlement is made provided that the requirements are satisfied, and
 - (ii) ends on the day on which the determination of entitlement is made.]

Applications made within 13 weeks of a qualifying benefit decision

19.—(1) — Where an individual makes an application for Carer Support Payment in respect of a cared for person within 13 weeks of a relevant qualifying benefit decision, the Scottish Ministers may choose that entitlement to assistance begins on a date within the relevant period, provided the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that date.

(2) For the purposes of this regulation—

“relevant period” means the period beginning with the date on which the award of the qualifying benefit became payable to the cared for person and ending on the first day of the award week in which the individual’s application for Carer Support Payment is treated as made, and

“relevant qualifying benefit decision” means a decision—

- (a) made by the Secretary of State for Work and Pensions or the Scottish Ministers—
 - (i) on a claim or an application, or
 - (ii) on revision, determination of entitlement, or supersession, or

- (b) on appeal whether by the First-tier Tribunal, the First-tier Tribunal for Scotland, the Upper Tribunal or the court, awarding a qualifying benefit to the cared for person mentioned in paragraph (1).

Entitlement beginning before the commencement of these Regulations

20. Where the Scottish Ministers make a determination under regulation 19 (applications made within 13 weeks of a qualifying benefit decision) the effect of which is that an individual's entitlement to Carer Support Payment would begin on a date before the commencement of these Regulations—

- (a) the claimant is treated as having made a claim for Carer's Allowance under section 70 of the Social Security Contributions and Benefits Act 1992 for the period starting with that date and ending on the date of commencement of these Regulations,
- (b) the determination is to be made on the assumption that the individual satisfied the eligibility requirements in section 70 of the Social Security Contributions and Benefits Act 1992, read with the Social Security (Invalid Care Allowance) Regulations 1976 for that period, and
- (c) any payments of Carer Support Payment made in respect of that period are to be treated as though they were payments of Carer's Allowance.

Amount and form of Carer Support Payment where payments are backdated

21. Any payment of Carer Support Payment made in respect of a period—

- (a) before the commencement of these Regulations is to be paid at the weekly rate specified in specified in paragraph 4 of Part III of schedule 4 to the Social Security Contributions and Benefits Act 1992, or
- (b) after the commencement of these Regulations is to be paid at the weekly rate specified in regulation 16(1) (amount and form of Carer Support Payment), as it had effect during the period to which that payment relates.

Time of payment

22. Where an award of Carer Support Payment is made, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment 4 weekly in arrears, or
- (c) weekly in advance.

Determination to reduce an award

23.—(1) This regulation applies where an individual who has an ongoing entitlement to Carer Support Payment—

- (a) earns in an award week an amount which exceeds the earnings limit set out in regulation 14,
- (b) cares for a cared for person whose qualifying benefit has been—
 - (i) reduced to £0,**(a)**
 - (ii) suspended as a result of—
 - (aa) the circumstances mentioned in regulation 26A(3)(a) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 or

(a)

regulation 38(3)(a) of the Disability Assistance for Working Age People (Scotland) Regulations 2022,

- (bb) a failure to furnish information in accordance with regulation [XX] of [XX] Regulations,
- (cc) the cared for person being in hospital or residential care for more than 28 days in accordance with regulation [XX] of [XX] Regulations,
- (dd) the cared for person voluntarily relinquishing their entitlement to their qualifying disability benefit in accordance with regulation [XX] of [XX] Regulations,
- (ee) the cared for person being imprisoned or held in legal detention, or

(c) subject to regulation 40 (temporary break in care), fails to satisfy the requirements of regulation 5(2) (provision of care to a cared for person) in respect of any award week, or

(2) Where paragraph (1) applies, the Scottish Ministers are to make a determination without receiving an application that the value of Carer Support Payment that is to be given to the individual is £0 instead of the value set out in regulation 16(1) (amount and form of Carer Support Payment).

(3) Where paragraph (1)(a), (b)(i) or (c) applies, the determination comes into effect on the first day of the award week following the award week in which—

- (a) the earnings limit has been exceeded,
- (b) the cared for person's qualifying benefit has been reduced to £0, or
- (c) the requirements of regulation 5(2) (provision of care to a cared for person) are not satisfied,

and will remain in effect for a maximum period of 26 weeks.

(4) Where paragraph (1)(b)(ii) applies, the determination comes into effect on the first day of the award week following the day on which the cared for person's qualifying benefit has been suspended for 4 weeks.

(5) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination under paragraph (2), set a later date for the purposes of paragraphs (3) and (4).

(6) Where paragraph (1)(a), (b) or (c) applies after the end of the 26 week period mentioned in paragraph (3), the Scottish Ministers are to make a determination without receiving an application that the individual is no longer entitled to Carer Support Payment.

Multiple applications involving the same cared for person

24.—(1) Where the Scottish Ministers receive two or more applications for Carer Support Payment from different individuals in respect of the same cared for person, the Scottish Ministers must determine the application made first before determining any other applications.

(2) Where, but for regulation 5(4) of these Regulations, two or more individuals would be entitled to Carer Support Payment, Carer's Allowance or the carer element of Universal Credit in respect of the same cared for person for the same period, only one of them may be entitled to any such benefit, being either—

- (a) one of them as they may jointly agree in accordance with paragraph (3), or
- (b) in absence of such agreement, one of them as may be determined by the Scottish Ministers in accordance with the eligibility criteria set out in Part 3 of these Regulations

(3) An agreement under paragraph (2)(a) is to be made by giving either the Scottish Ministers a notice in writing signed by the individuals mentioned in paragraph (2) specifying one of them as the individual to be entitled to assistance.

Continuing eligibility

25.—(1) Subject to paragraphs (3) and (4), a determination that an individual is entitled to Carer Support Payment in respect of a period is to be made on the basis that the individual has an ongoing entitlement to Carer Support Payment after the end of that period, except where paragraph (2) applies.

(2) This paragraph applies where, after the end of the period mentioned in paragraph (1), the individual no longer satisfies the eligibility rules.

(3) A determination of ongoing entitlement is made on the basis that—

- (a) the individual will continue to be entitled to Carer Support Payment for a fixed or indefinite period as specified in the notice of determination, and
- (b) the decision that the individual is entitled to Carer Support Payment for each subsequent 4-week period is to be taken in accordance with these Regulations, on the strength of the assumptions set out in paragraph (4).

(4) The assumptions are that—

- (a) the individual continues to satisfy the eligibility criteria which were satisfied to be entitled to Carer Support Payment under the determination mentioned in paragraph (1),
- (b) the information on which the determination mentioned in paragraph (1) was made still applies and is relevant in the individual's case, and
- (c) there is no change in circumstances of the individual which would require to be notified under section 56 of the 218 Act (duty to notify change of circumstances).

Form of payment – giving Carer Support Payment by way of deduction

26.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual's payment of Carer Support Payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual's agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purposes of paragraph (1), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

When a decrease in amount or cessation of entitlement takes effect

27.—(1) Where, as a result of determination without application, the amount of Carer Support Payment payable in respect of an individual is decreased or their entitlement to Carer Support Payment ceases, the change takes effect—

- (a) in the case of a determination without application under regulation 35 (consideration of entitlement after specified period) or 36(a) (determination following change of circumstances etc.), on the first day of the award week following the award week in which—

(i) the individual was required to notify a change under section 56 of the 2018 Act, if the individual—

(aa) knowingly fails to notify a change, or

(bb) fails to notify the change as soon as reasonably practicable after it occurred,

the individual should have notified the Scottish Ministers of the change, or

(ii) in any other case, the Scottish Ministers make the determination,

- (b) in the case of an earlier determination which was based on error within the meaning of—

(i) regulation 37 (determination following official error – underpayments), on the first day of the award week in which the earlier determination took effect, or

- (ii) regulation 38 (determination following error – overpayments), on the first day of the award week following the award week in which the earlier determination took effect,
- (c) in any other case, on the first day of the award week following the award week in which the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set a later date for the purposes of paragraph (1).

When an increase in amount of entitlement takes effect

28.—(1) Where, as a result of a determination without application, the amount of Carer Support Payment payable in respect of an individual is increased, the change takes effect—

- (a) in the case of an increase pursuant to a determination made under regulation 36(a) (determination following change of circumstances etc.), on the first day of the award week in which—
 - (i) the individual first satisfies the requirements for an increased amount of Carer Support Payment—
 - (aa) where the individual reports the change within 13 weeks of the change occurring,
 - (bb) where the individual reports the change more than 13 weeks after the change occurring, but only if the Scottish Ministers consider that the individual has good reason for not reporting the change within 13 weeks, or
 - (ii) the individual reports the change,
 - (iii) where as a result of the Scottish Ministers becoming aware that a determination of an individual’s entitlement was made in ignorance of a material fact, the Scottish Ministers make the determination.
- (b) in the case of an earlier determination which was based on error within the meaning of—
 - (i) regulation 37 (determination following official error – underpayments), on the first day of the award week in which the earlier determination took effect, or
 - (ii) regulation 38 (determination following error – overpayments), on the first day of the award week following the award week in which the earlier determination took effect,
- (c) in any other case, on the first day of the award week following the award week in which the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph (1).

PART 5

Suspensions

Circumstances in which assistance may be suspended

29.—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Carer Support Payment in respect of a period by virtue of regulation 25 (continuing eligibility) is not to become entitled to be given some or all of that assistance at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 22 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Carer Support Payment).

(2) Where such a decision is made in respect of an individual, payments of Carer Support Payment to that individual are to be suspended until such time as the Scottish Ministers decide that the individual is once again to become entitled to be given Carer Support Payment.

(3) The Scottish Ministers may decide to suspend an individual’s Carer Support Payment only in the circumstances where—

- (a) section 54(1A) of the 2018 Act^(a) applies, or
- (b) the Scottish Ministers have made arrangements (whether under section 85B of the 2018 Act or otherwise) for a person to receive Carer Support Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Carer Support Payment—
 - (i) in order to protect the individual from the risk of financial abuse, or
 - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Carer Support Payment.
- (c) In this regulation “financial abuse” includes—
 - (i) having money or other property stolen,
 - (ii) being defrauded,
 - (iii) being put under pressure in relation to money or other property,
 - (iv) having money or other property misused.

Having regard to financial circumstances

30. The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend payment to the individual of some or all of Carer Support Payment.

Information to be given following suspension

31.—(1) Having made a decision to suspend an individual’s Carer Support Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Carer Support Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 32 (right to review suspension) to require the Scottish Ministers to review their decision.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Right to review suspension

32.—(1) An individual may require the Scottish Ministers to review a decision to suspend that individual’s Carer Support Payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day on which they received notice from the individual requiring them to review their decision,
- (b) inform the individual of the outcome of the review including the reasons for it.

(3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

(a)

Ending a suspension

33. The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information requested under section 54(1) of the 2018 Act and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 29(3)(a) (circumstances in which assistance may be suspended) applies and the Scottish Ministers make a determination without application under regulation 35 (consideration of entitlement after specified period), 36 (determination following change of circumstances, etc.), 37 (determination following official error – underpayments), 38 (determination following error – overpayments) or 39 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act,
- (d) the circumstances mentioned in regulation 23(3)(b) (circumstances in which assistance may be suspended) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

Effect of suspension ending

34. When—

- (a) the suspension of an individual’s Carer Support Payment ends, and
- (b) under the latest determination of the individual’s entitlement to Carer Support Payment relating to the period of the suspension the individual would have become entitled to be given Carer Support Payment during that period,

the individual is immediately to be given the Carer Support Payment that the individual would have become entitled to be given under the determination during the period of suspension.

PART 6

Re-consideration of entitlement to Carer Support Payment: determination without application

Consideration of entitlement after specified period

35. The Scottish Ministers must make a determination of an individual’s entitlement to Carer Support Payment, without receiving an application, after the end of the period specified (if any) in—

- (a) the individual’s notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49,

of the 2018 Act.

Determination following change of circumstances etc.

36. The Scottish Ministers must make a determination of an individual’s entitlement to Carer Support Payment, without receiving an application, where the individual has an ongoing entitlement to Carer Support Payment and they become aware—

- (a) of a change of circumstances whether or not notified by the individual in accordance with section 54 or 56 of the 2018 Act, or where the Scottish Ministers become aware that a determination of an individual’s entitlement was made in ignorance of a material fact which is likely to result in an alteration to the amount of Carer Support Payment payable to the individual or which is likely to mean that the individual is no longer entitled to Carer Support Payment, or

- (b) that the individual has died,
- (c) that the cared for person has died,
- (d) of an alteration of the award of Carer’s Allowance which the individual was entitled to immediately before the date of transfer to Carer Support Payment in accordance with [Part 2 of the schedule], as a result of a decision made pursuant to—
 - (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”)(a),
 - (ii) a supersession under regulation 6(b) of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”)(c),
 - (iv) a re-consideration under section 13 of the 1998 Act(d),
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act(e),
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998(f) (“the 1998 Order”),
 - (vii) a supersession under article 11 of the 1998 Order(g),
 - (viii) an appeal under article 13 of the 1998 Order(h), or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order(i),
- (e) of an alteration of the award of Carer’s Allowance which the individual was entitled to immediately before moving to Scotland in circumstances in which regulation 41 (individuals in respect of whom Carer’s Allowance is paid in another part of the United Kingdom immediately before moving to Scotland) applies, as a result of a decision made pursuant to—
 - (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”)(j),
 - (ii) a supersession under regulation 6(k) of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”)(l),
 - (iv) a re-consideration under section 13 of the 1998 Act(m),
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act(n),
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998(o) (“the 1998 Order”),
 - (vii) a supersession under article 11 of the 1998 Order(p),
 - (viii) an appeal under article 13 of the 1998 Order(q), or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order(r).

(a)
 (b)
 (c)
 (d)
 (e)
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 (h)
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 (q)
 (r)

Determination following official error - underpayments

37.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Carer Support Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Carer Support Payment (“the original determination”),
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
 - (i) not being given an award of Carer Support Payment, or
 - (ii) being given a lower award than that, to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to Carer Support Payment, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Minister’s determination of the individual’s entitlement to Carer Support Payment.

(2) In making a determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information—
 - (i) provided in the application that led to the original determination,
 - (ii) any other information they have obtained in connection with that application, and
- (b) any other information they have obtained in connection with the individual’s entitlement to Carer Support Payment.

(3) In this regulation “official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone else.

Determination following error – overpayments

38.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Carer Support Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Carer Support Payment (“the original determination”),
- (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
 - (i) an award of Carer Support Payment to which the individual was not entitled, or
 - (ii) a higher award than that to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to Carer Support Payment, and
- (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the Scottish Minister’s determination of the individual’s entitlement to Carer Support Payment, that has not yet been determined.

(2) In making a determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information—
 - (i) provided in the application that led to the original determination, and
 - (ii) any other information they have obtained in connection with that application,
- (b) any other information they have obtained in connection with the individual’s entitlement to Carer Support Payment, and
- (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Carer Support Payment.

(3) In this regulation references to an “error” are to—

- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
 - (i) wrongly, or
 - (ii) correctly but on the basis of—
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong, or
- (b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.

Determination to effect a deduction decision

39.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Carer Support Payment, without receiving an application, where the circumstances in paragraphs (2) and (3) apply.

(2) This paragraph applies where—

- (a) regulation 26 (form of payment – giving Carer Support Payment by way of deduction) allows Carer Support Payment to be given to the individual by way of deduction, or
- (b) Carer Support Payment is being given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

(3) This paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Carer Support Payment to be given by way of deduction (including introducing a deduction, where the full amount of Carer Support Payment was previously given as money),
- (b) vary any period for which the individual’s Carer Support Payment is to be given by way of deduction, that may have been specified in a previous determination of the individual’s entitlement, or
- (c) cease making deductions, and instead give the individual’s Carer Support Payment in the form of money.

(4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Carer Support Payment by way of deduction under a previous determination of entitlement notifies the Scottish ministers that the individual—

- (a) withdraws their agreement to their Carer Support Payment being given by way of deduction,
- (b) wishes the Scottish Ministers to increase the amount of their Carer Support Payment that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Carer Support Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in paragraph (3)(b).

PART 7

Breaks in care

Temporary break in care

40.—(1) An award week in respect of which an individual fails to satisfy the requirement of regulation 5(2) (provision of care to a cared for person) shall be treated as an award week in respect of which that individual satisfies that requirement if—

- (a) that individual has only temporarily ceased to satisfy it, and

- (b) that individual has satisfied it for at least 14 weeks in the period of 26 weeks ending with that week and would have satisfied it for at least 22 weeks in that period but for the fact that—
 - (i) that individual was undergoing medical or other treatment as an in-patient in a hospital or similar institution, or
 - (ii) the cared for person was undergoing medical or other treatment as an in-patient in a hospital or similar institution.
- (2) Regulation 14 (earnings limit) does not apply to an individual in respect of an award week described in paragraph (1).

PART 8

Movement of individuals between Scotland and the rest of the United Kingdom

Individuals in respect of whom Carer’s Allowance is paid in another part of the United Kingdom immediately before moving to Scotland

41.—(1) Where an individual—

- (a) becomes resident in Scotland,
- (b) was resident in another part of the United Kingdom, and
- (c) was entitled to Carer’s Allowance in respect of a cared for person immediately before the date of the move,

the Scottish Ministers are to make a determination without application of the individual’s entitlement to Carer Support Payment.

(2) Entitlement to Carer Support Payment under paragraph (1) begins on the day after the day on which the individual’s entitlement to Carer’s Allowance ends.

(3) In this regulation, “the date of the move” is the date when the individual becomes resident in Scotland or otherwise communicated to the Scottish Ministers (whether the notification takes place before or after the date of the move).

Individuals in respect of whom Carer Support Payment is paid at the time of moving to another part of the United Kingdom

42.—(1) Where the Scottish Ministers become aware that an individual who is entitled to Carer Support Payment has moved or is to move to become resident in another part of the United Kingdom, the individual is to be treated as though the individual meets the condition under regulation 6(1)(a) (residence and presence conditions) of being ordinarily resident in Scotland for a period of 13 weeks beginning in accordance with paragraph (4).

(2) Where the Scottish Ministers become aware that an individual has moved or is to move to another part of the United Kingdom mentioned in paragraph (1), they are to make a determination without application at the end of the 13-week period mentioned in paragraph (1) that the individual’s entitlement to Carer Support Payment is to terminate.

(3) Where before the end of the 13-week period, the Scottish Ministers become aware that the individual is no longer to move to become resident in another part of the United Kingdom, the duty in paragraph (2) does not apply.

(4) The 13-week period mentioned in paragraph (1) begins on the date the individual ceases to be ordinarily resident in Scotland.

(5) On the day after the 13-week period specified in paragraph (4) ends—

- (a) entitlement to Carer Support Payment ceases, and

- (b) regulation 37 (determination following error – overpayments) applies to any Carer Support Payment paid to an individual in relation to a period after the end of that 13-week period.

PART 9

Periods in respect of a re-determination request

Periods in respect of a re-determination request

43.—(1) The period for requesting a re-determination of entitlement to Carer Support Payment under section 41 of the 2018 Act (right to request re-determination) is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act (notice of determination), of the right to make the request.

(2) In relation to determining entitlement to Carer Support Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers,
- (b) in a case where the request for a re-determination is received by the Scottish Ministers outwith the period prescribed in paragraph (1), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual in question has good reason for not requesting a re-determination sooner, or
- (c) in a case where the Scottish Ministers have informed the individual of their decision that the request for a re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

PART 9

Initial period for applications

Initial period for applications

44. Part 1 of the schedule makes provision about the initial period for applications.

PART 10

Transfer from Carer's Allowance to Carer Support Payment

Transfer from Carer's Allowance to Carer Support Payment

45. Part 2 of the schedule makes provision about transferring from Carer's Allowance to Carer Support Payment.

PART 11

Transitory provision

Transitory provision – initial period for applications

46.—(1) During the initial period for applications, in addition to satisfying the residence and presence conditions in regulations 6 to 11, an individual must be resident in one of the local authority areas specified in paragraph 2 of Part 1 of the schedule on the date their application is received by the Scottish Ministers.

(2) In this regulation and in Part 1 of the schedule, “initial period for applications” means the period beginning with [XXX] and ending with [XXX].

Exclusion to transitory provision

47.—(1) An individual who has made a claim for Carer’s Allowance prior to [XXX] which has not yet been decided is not entitled to be paid Carer Support Payment during the initial period for applications.

(2) In paragraph (1) a claim for Carer’s Allowance is decided if it has—

- (a) been decided by the Secretary of State under section 70 of the Social Security Contributions and Benefits Act 1992,
- (b) been withdrawn in accordance with regulation 5(2) of the Social Security (Claims and Payments) Regulations 1987(a), or
- (c) otherwise is no longer to be decided by the Secretary of State as mentioned in subparagraph (a).

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

Date

SCHEDULE

Regulation [20]

PART 1

Initial period for applications

Initial period for applications

1.—(1) These Regulations apply to an individual who is resident in one of the local authority areas mentioned in paragraph 2 when the individual makes an application for Carer Support Payment during the initial period for applications.

(2) An individual who is awarded Carer Support Payment pursuant to an application made during the initial period for applications will continue to be entitled if that individual moves to another local authority area in Scotland.

(a) S.I. 1987/1968.

Local authority areas for initial period for applications

2. The local authority areas specified for the purposes of regulation 43 (initial period for applications) are—

- (a) XXX,
- (b) XXX, and
- (c) XXX.

PART 2

Transfer to Carer Support Payment

Interpretation

3. In this Part of the schedule—

“date of transfer” means the date when a transferring individual’s entitlement to Carer Support Payment begins by virtue of a determination made under paragraph 5(1),

“relevant individual” means an individual—

- (a) who has an award of Carer’s Allowance who appears to the Scottish Ministers to be likely to be eligible for Carer Support Payment,
- (b) who is—
 - (i) ordinarily resident in Scotland, or
 - (ii) someone to whom regulation 6(3) (residence and presence conditions individuals to whom the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland applies) or 11(2) (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies,

“sufficient” means a link to Scotland that is sufficiently close that regulation 6(3) or 11(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Carer Support Payment,

“transfer notice” means the notice required by paragraph 4,

“transferring individual” means a relevant individual on whom the Scottish Ministers have served a notice of intention to transfer in accordance with paragraph 4.

Notice of intention to transfer to Carer Support Payment

4.—(1) The Scottish Ministers are to notify each relevant individual of their intention to transfer that individual’s entitlement to carer’s assistance from an entitlement to Carer’s Allowance to an entitlement to Carer Support Payment.

(2) Notice under sub-paragraph (1) must—

- (a) be given in a way that leaves the relevant individual with a record of the information which they can show to, or otherwise share with, others,
- (b) inform the relevant individual that—
 - (i) they have been identified as a relevant individual for the purpose of transfer to Carer Support Payment,
 - (ii) the Scottish Ministers will make a determination without receiving an application to transfer the individual’s entitlement to Carer’s Allowance to an entitlement to Carer Support Payment within a period to be specified in the notice (the individual will be notified when the determination is made and informed about their award and start date of Carer Support Payment), and

(iii) the individual's award of Carer's Allowance will cease immediately before the award of Carer Support Payment begins.

(3) Where a notice under sub-paragraph (1) is given in error where the individual is neither—

- (a) ordinarily resident in Scotland, nor
- (b) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in paragraph 5(1) (determination without application of entitlement to Carer Support Payment) does not apply.

(4) Where sub-paragraph (3) applies in respect of an individual and a determination under paragraph 5(1) has not been made, the Scottish Ministers are to notify the individual that the duty on the Scottish Ministers in paragraph 5(1) does not apply.

Determination without application of entitlement to Carer Support Payment

5.—(1) The Scottish Ministers are to make a determination without receiving an application in respect of a transferring individual of that individual's entitlement to Carer Support Payment.

(2) Entitlement to Carer Support Payment under a determination under sub-paragraph (1) begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act.**(a)**

(3) The determination under sub-paragraph (1) is to be made on the basis of—

- (a) such information as the Scottish Ministers have received from the Secretary of State for Work and Pensions in respect of the transferring individual's entitlement to Carer's Allowance, and
- (b) any other information available to the Scottish Ministers that appears to be relevant.

(4) A determination under sub-paragraph (1) must be made on the basis that the transferring individual is entitled to the amount of Carer Support Payment that is equivalent to the amount of Carer's Allowance to which the individual was entitled immediately before the date of transfer.

(5) A determination under sub-paragraph (1)—

- (a) may be made on the assumption that whatever can be discerned about the transferring individual's circumstances from the information mentioned in sub-paragraph (3) remains accurate on the date on which the determination is made,
- (b) notwithstanding the generality of head (a), is to be made on the assumption that the conditions relating to residence and presence set out in regulations 6 to 11 (residence and presence conditions etc.) are satisfied in the individual's case, and
- (c) must be made not later than the period specified in the notice under paragraph 4(1) (notice of intention to transfer to Carer Support Payment) unless the Scottish Ministers have—
 - (i) good reason to extend that period,
 - (ii) agreed the period for extension with the Secretary of State for Work and Pensions, and
 - (iii) notified the transferring individual of the extension and reason for it.

Date of cessation of Carer's Allowance

6. Where a determination is made under paragraph 5(1) (determination without application of entitlement to Carer Support Payment) that the transferring individual is entitled to Carer Support

(a)

Payment, the transferring individual's entitlement to Carer's Allowance will cease on the date their entitlement to Carer Support Payment begins.

Modification of these regulations: transferring individuals

7. These Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) in regulation 22, for sub-paragraph (b), substitute—
 - “(b) any subsequent payment—
 - (i) 4 weekly in arrears,
 - (ii) weekly in advance,
 - (iii) in respect of an individual who was paid Carer's Allowance one week in advance and 3 weekly in arrears—
 - (aa) 4 weekly in arrears or,
 - (bb) where the individual has informed the Scottish Ministers that they wish to be paid weekly in advance, weekly in advance, or
 - (iv) where the Scottish Ministers consider that it would be unjust not to do so, at such intervals as may be specified in the notice of determination.”

Appointees

8.—(1) A person appointed by the Secretary of State for Work and Pensions under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 to receive Carer's Allowance on behalf of a transferring individual is to be treated on and after the date of transfer as though appointed by the Scottish Ministers to act on behalf of that transferring individual under section 85B of the 2018 Act.

- (2) As soon as reasonably practicable after the date of transfer, the Scottish Ministers must—
 - (a) consider whether the conditions for making an appointment in respect of the transferring individual are met (having regard to section 85B(3) of the 2018 Act),
 - (b) consider whether to terminate the appointment that is treated as having been made by virtue of sub-paragraph (1) and terminate it if they consider it appropriate, and
 - (c) if they have terminated an appointment in pursuance of head (b), appoint under section 85B of the 2018 Act another person to act on the transferring individual's behalf if they consider it appropriate to do so.

(3) The duty in paragraph (2) does not apply to an individual in respect of whom the Scottish Ministers have already considered whether the conditions for making an appointment are met in accordance with paragraph 15 (appointees) of Part 3 of schedule 2 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 or paragraph 14 (appointees of Part 3 of schedule 2 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021.

PART 3

Calculation of earnings

PART 4

Consequential amendment

9.—(1) The Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 are amended in accordance with paragraph (2).

(2) In regulation 6(3)(a) for “carer’s assistance”, substitute, “Carer Support Payment”.

(3) In regulation 7(2) (further eligibility conditions), omit the words “in respect of any of the persons being cared for”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

POLICY NOTE

THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 28(2), [36(2),] 41(4)(a), 43(5), 51(1), 52, and 95 of the Social Security (Scotland) Act 2018¹. The instrument is subject to *affirmative procedure*.

Summary Box

This instrument sets out the rules and eligibility criteria for Carer Support Payment (CSP), a form of assistance to provide support to people providing regular and substantial care to another individual who normally receives a certain rate of disability assistance. This new form of social security assistance will be administered by Social Security Scotland and will replace Carer's Allowance (CA) in Scotland.

This instrument also includes provision to transfer the benefits of individuals who live in Scotland and receive CA (which is currently administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive CSP, to be administered by Social Security Scotland on behalf of the Scottish Ministers.

Policy Objectives

Carer Support Payment (CSP) is intended to improve outcomes for unpaid carers by providing financial assistance to those providing regular and substantial care to someone in receipt of a qualifying disability benefit. Carer Support Payment will be an income-replacement benefit in recognition of the impact of caring on carers' ability to earn income through paid work. It is also intended to provide recognition of the vital caring role being provided, and the wider impact of this on carers, and to help support carers to access opportunities outside of caring.

Carer Support Payment will replace Carer's Allowance (CA) in Scotland. It will be delivered by Social Security Scotland on behalf of Scottish Ministers. Carer Support Payment systems and processes are being designed with carers and support organisations in line with our aim to ensure carers have a positive experience of the social security system, and to maximise carers' take-up of all support available to them. As part of this, information, notifications and services relating to Carer Support Payment are being designed to increase carers' awareness of the wider carer support and services available.

The regulations include provisions detailing the eligibility criteria, rate of assistance, making of applications and payments for Carer Support Payment. Eligibility criteria for Carer Support Payment set out in these regulations for the initial launch of the benefit will broadly align with the eligibility criteria for Carer's Allowance. This is to protect the safe and secure transfer of benefits for carers in Scotland who are already receiving Carer's Allowance, until the point that this transfer process is complete. It is also intended to avoid a 'two tier system' during this time in which carers receiving Carer's Allowance and Carer Support Payment would otherwise

¹ <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

be treated differently. At the same time, regulations will ensure that Carer Support Payment is delivered in line with the Social Security principles within the framework of the Social Security (Scotland) Act 2018 ('the 2018 Act') and provide consistency with other benefits delivered by the Scottish Government wherever possible.

In line with the above, Carer Support Payment will be available to people aged 16 or over, who are providing 35 or more hours of care a week to someone in receipt of a qualifying disability benefit. Carers must be earning less than £139 per week from employment or self-employment. [Part 3 of the schedule to the regulations provides for how earnings will be calculated for the purpose of this, which aligns with the calculation of earnings for Carer's Allowance.]

Residence and presence conditions

Provisions relating to the residence criteria are included in the draft Regulations in line with the devolved disability benefits – Child and Adult Disability Payments. Regulation 6 sets out the residence and presence criteria that need to be met. [This provides for a reduced past presence test compared to that currently in place for Carer's Allowance to allow carers moving into the Common Travel Area to access support sooner. This requires an individual to have been present in the Common Travel Area for 26 of the past 52 weeks in order to receive support. It also sets out circumstances where the test is dis-applied including where a person is receiving support under the Special Rules for Terminal Illness, has a refugee or humanitarian protection status, or is caring for someone who meets these criteria.]

Individuals in education

Provisions relating to education are included in the draft Regulations (Regulation 11). From launch these will mirror the current Carer's Allowance rules which prevent anyone in full-time education (21 hours or more per week) from receiving the benefit.

Amount of Carer Support Payment

Regulations provide for the rate at which Carer Support Payment will be paid. Carers receiving Carer Support Payment will be entitled to Carer's Allowance Supplement in the same way as carers in Scotland receiving Carer's Allowance.

As an income-replacement benefit, it will not be possible for carers to receive Carer Support Payment in full at the same time as another income-replacement benefit. Regulation 16 also provides that the amount of Carer Support Payment may be reduced or set to £0 where a carer is receiving another 'overlapping benefit'.

[Regulation 17 also provides for a process that would replicate the effect of the 'abatement' process used internally within the Department for Work and Pensions (DWP) to address overpayments of income-based legacy benefits that occur as a result of Carer Support Payment being paid in respect of the same periods.]

Regulation 20 is intended to ensure carers are able to access all the support they are entitled to where they make an application for Carer Support Payment which they would be eligible to backdate to a point before the regulations were in force, but would have been unable to apply for Carer's Allowance at that time. This may happen in situations where the benefit of the person they care for is backdated following a Tribunal decision. Regulations provide that the carer's application can be treated as an application for Carer's Allowance and payments can be treated as payments of Carer's Allowance in respect of the period before the regulations came into force.

Suspension of assistance

Provisions relating to suspension of assistance are included in the draft Regulations in line with provisions set out in the 2018 Act. Regulation 29 sets out the specific circumstances in which entitlement can be suspended. Suspension powers are limited in line with the overall approach for devolved benefits, in recognition of concerns around the impact of benefit suspensions on clients. Broadly we will suspend payments where information has not been provided on time, where a third party is unable to receive payments, or where there is suspected financial abuse. Regulations also set out the considerations that Scottish Ministers must make before suspending assistance to prevent hardship to carers, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs, circumstances in which a suspension should end and the effect of a suspension ending.

Nil awards

Regulation 23 provides for an ongoing award of Carer Support Payment to be set to £0 in certain circumstances. This is intended to prevent overpayments where a carer is not entitled to support but it is anticipated to be a temporary break in entitlement. This will prevent the need for an award to be ended and carers to re-apply for support. Carer Support Payment awards would be set to £0 for any week in which a cared for person's qualifying benefit award is set to £0 or not in payment, when it is suspended in certain circumstances, or when it is ended. An award of Carer Support Payment may also be set to £0 where a carer has earnings over the earnings limit, or where they have exceeded the allowed amount of breaks in care.

Case Transfer from CA to CSP

The regulations include provisions to transfer the awards of individuals who live in Scotland and receive Carer's Allowance (which is administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive Carer Support Payment, to be administered by Social Security Scotland on behalf of Scottish Ministers.

Scottish Ministers have developed a safe and secure process, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

- no individual will be required to re-apply for their benefit;
- individuals will receive clear communications about the case transfer process;
- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

Notice of intent to transfer

When an individual's carer benefit has been selected for transfer, Scottish Ministers will receive data and information relevant to the individual's most recent Carer's Allowance award from DWP. Once Scottish Ministers have received this information, the regulations make provision for the Scottish Ministers to notify the individual of the intention to transfer them to Carer Support Payment. This notice will set out the process for that transfer.

Determination without application

Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to Carer Support Payment on a like-for-like basis within a fixed period set out in the notice of intention to transfer. This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good

reason to do so. The individual will be notified of any extension of the period and the reasons for it.

The determination of the individual's entitlement to Carer Support Payment will also end the corresponding award of Carer's Allowance. A determination of entitlement in respect of Carer Support Payment made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

Residence

Scottish Ministers will identify individuals who will transfer from Carer's Allowance to Carer Support Payment using the residential address held by DWP in the individual's Carer's Allowance record. An individual will be assumed to meet the residence and presence conditions for Carer Support Payment at the point of transfer if they have a Scottish postcode.

If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Carer Support Payment determination and the resulting entitlement. This will also undo the termination of the Carer's Allowance award.

Appointees

All individuals appointed by DWP in respect of a Carer's Allowance award, who have not already been appointed by Scottish Ministers for the same individual, will be temporarily deemed to act as an appointee for the purposes of Carer Support Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

Payment cycles

Provisions relating to case transfer clients receiving Carer's Allowance on a 3+1 payment cycle (where they are paid one week in advance and three weeks in arrears) are included in the draft Regulations. Regulation 7 of Part 2 of the Schedule sets out the specific provisions ensuring people receive the right payments at the right time on case transfer with no gap in support. The regulation set out provisions to move the awards of case transfer clients on a 3+1 payment cycle to a 4 weekly in arrears payment cycle, with the option to request a move to weekly in advance payments.

Consultation

Between 28 February 2022 and 23 May 2022, the Scottish Government undertook a public consultation on how our replacement benefit for Carer's Allowance could work better for carers, from launch, and in future. The consultation received around 200 responses from individuals and stakeholder organisations. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. During the consultation period officials attended Carers Scotland's Annual Carers Summit and nine engagement events were undertaken to hear from a wide and diverse range of carers. Specific research was also carried out with Social Security Scotland Experience Panels, with 242 members responding to a survey, and 16 follow up interviews. This took place between March and July 2022. Following the consultation period, a series of

workshops to take feedback on proposals in light of the consultation responses were held with the Carer Benefits Advisory Group (CBAG)².

An analysis of the responses to the consultation was published on 8 November³. A summary report⁴ from the research with experience panel members was published on 9 November 2022. The Scottish Government will publish a response to the public consultation in March 2023.

Respondents were broadly supportive of the policy proposals, and general, the approach outlined in the consultation paper was perceived to be more sympathetic, flexible, and person-centred. Respondents were supportive of aligning the approach on residence and re-determinations and appeals with the disability benefits, and on the use of ‘nil rating’ as a way to prevent overpayments and reduce the need for carers to re-apply for support after temporary breaks in entitlement. The response to the consultation has informed the development of policy for Carer Support Payment, including the strong support for:

- the proposal to provide an improved service to carers, joining up with wider services to help carers access clear information on the support available to them has guided policy development. There will be a strong focus on providing information and signposting from launch, linking carers to other services at key moments of transition such as the start or end of a caring role, and supporting carers to access opportunities outside of caring, should they wish to do so; and
- the proposal to reduce the education restriction, with work ongoing to develop the detail of this policy and impact when, in future, this change can be made to ensure those in full time advanced education can access Carer Support Payment.

Case transfer

In January and February 2019, two surveys regarding the case transfer process for disability assistance were sent out to Experience Panel members. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019. These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

Additionally, the Scottish Government has been working with relevant stakeholders including the Disability and Carer Benefits Expert Advisory Group (DACBEAG), to develop and receive advice on case transfer principles and the development of the approach to case transfer. Scottish Government officials presented to DACBEAG members on proposed case transfer policy on 3 November 2022, highlighting issues specific to Carer’s Allowance case transfer, such as payment cycles, earnings and breaks in care. DACBEAG’s advice of 9 December 2022 provided recommendations in relation to payment cycles and earnings, and this advice has been used in developing the policy for these areas.

Scottish Commission on Social Security - scrutiny of the draft Regulations

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Ministers are required to inform the Scottish Commission on Social Security (SCoSS) of their proposals in relation to regulations made under any section in Chapter 2 of Part 2 to the 2018 Act. Having been informed of any such proposals, SCoSS must then prepare a report setting out its observations and recommendations in relation to the proposals. SCoSS may also be required to scrutinise and report on any further matters which the Scottish Ministers request under section 22(1)(b)

² Carer Benefits Advisory Group - gov.scot (www.gov.scot)

³ Introduction - Scottish Carer's Assistance: consultation analysis - gov.scot (www.gov.scot)

⁴ Social Security Experience Panels - Scottish Carer's Assistance: visual summary - gov.scot (www.gov.scot)

of the 2018 Act. As a result a draft of the regulations is now shared with SCoSS. Given the complexities of Carer Support Payment the Scottish Government considers it appropriate to request SCoSS’ scrutiny of the entirety of the draft Regulations rather than limiting the request to the specific regulations that fall under section 97 of the 2018 Act.

The Scottish Government will publish its formal response to SCoSS’s report when laying these regulations before the Scottish Parliament.

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, and a Children’s Rights and Wellbeing Impact Assessment are being developed alongside Carer Support Payment policy at launch. Outline assessments were published with the consultation to take feedback from respondents.

Current evidence on existing Carer’s Allowance recipients tells us that 90% of them live in a household with a disabled person, 70% of them are women and 11.5% are from lone parent households. They are also more likely to be in the bottom half of the income distribution. BAME carers are more likely to face financial difficulties and those with intensive caring roles are more likely to live in socially deprived areas.

It is anticipated from the analysis in the impact assessments that the commencement of Carer Support Payment will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children’s rights and improving their wellbeing. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations, however the impact assessments will set out the actions we will take in delivering Carer Support Payment to reach the broadest possible range of carers.

A Data Protection Impact Assessment (DPIA) is also being prepared in relation to this instrument.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed [and is provided with this instrument]. The Scottish Government does not believe that Carer Support Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The Scottish Government expects that there may be limited impact on the operational business of local authorities or health boards as a result of introducing these regulations.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Carer Support Payment. Current recipients of Carer’s Allowance are already able to access legal aid to appeal entitlement decisions.

Scottish Government

Social Security Directorate

02 March 2023