

# Social Justice and Social Security Committee

## 25<sup>th</sup> Meeting, 2023 (Session 6), Thursday, 26 October 2023

### Subordinate Legislation Cover Note

**Title of Instrument:** [Carer's Assistance \(Carer Support Payment\) \(Consequential and Miscellaneous Amendments and Transitional Provision\) \(Scotland\) Regulations 2023](#)

**SSI Number:** SSI 2023/258

**Laid Date:** 14 September 2023

**Reporting deadline:** 6 November 2023

**Coming into force:** 19 November 2023

**Type of instrument:** Negative

### Purpose of the regulations

1. As outlined in the [Policy Note](#) and [Explanatory Note](#) (available in the Annexe) the purpose of this instrument is to make consequential and miscellaneous amendments and transitional provision in connection with the introduction of Carer Support Payment, which will replace Carer's Allowance in Scotland.
2. The Policy Note states the changes are necessary to ensure that individuals receiving Carer Support Payment receive the same exemptions, disregards and passported benefits or premiums in devolved areas as those receiving Carer's Allowance.
3. The instrument also establishes a process for determining support when multiple carers apply for payments for the same care recipient.
4. Additionally, it prevents individuals in Scotland from applying for Carer's Allowance if they are eligible for Carer Support Payment instead.

## Parliamentary procedure

5. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
7. Members should note that it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

## Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on [26 September 2023](#) and made no recommendations in relation to this instrument. The Official Report for the meeting is available [here](#).

## For decision

9. **The Committee is invited to consider any issues it wishes to raise regarding this instrument.**

# ANNEX

## POLICY NOTE

### **THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS AND TRANSITIONAL PROVISION) (SCOTLAND) REGULATIONS 2023**

#### **SSI 2023/258**

The above instrument will, if approved, be made in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018 and section 70 of the Social Security Contributions and Benefits Act 1992. The instrument is subject to negative procedure.

**The purpose of this instrument is to make consequential and miscellaneous amendments and transitional provision in connection with the introduction of Carer Support Payment, which will replace Carer's Allowance in Scotland. Carer Support Payment will be introduced separately through the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023, which, if approved, will be made by Scottish Ministers in exercise of the powers under the Social Security (Scotland) Act 2018. These provisions are required to ensure that certain Statutory Instruments apply to individuals in receipt of Carer Support Payment in the same way as they apply to individuals who receive Carer's Allowance. These amendments will ensure that individuals who are entitled to Carer Support Payment will benefit from the same exemptions, disregards and passported benefits or premiums in devolved areas as individuals currently in receipt of Carer's Allowance. They will also provide for a process to determine who should receive support where different carers have applied for Carer's Allowance, the carer element of universal credit, or Carer Support Payment, for care provided to the same person. The transitional provision within this instrument will also prevent individuals in Scotland from applying for Carer's Allowance where they are eligible to apply for Carer Support Payment instead.**

#### **Policy Objectives**

1. This instrument will make consequential amendments to reflect the transition from Carer's Allowance to Carer Support Payment in Scotland, to ensure that related passported benefits continue to be accessible in Scotland through Carer Support

Payment in the same way as they currently are for people in receipt of Carer's Allowance. Carer's Allowance in Scotland is currently delivered on behalf of the Scottish Government by the Department for Work and Pensions.

2. When Carer Support Payment first launches, it will broadly mirror Carer's Allowance eligibility criteria. This is in order to avoid creating a two-tier system which would disadvantage carers already receiving Carer's Allowance, and to ensure that their benefits can be transferred safely and securely from the Department for Work and Pensions to Social Security Scotland.
3. Individuals aged 16 and over are eligible to apply for Carer Support Payment. They must also provide 35 hours or more of care a week to someone in receipt of a qualifying disability benefit, not earn more than £139 per week (2023/24 rate) after certain deductions including tax, National Insurance and expenses. They must be ordinarily resident in Scotland, habitually resident in the Common Travel Area, and have been present in the Common Travel Area for at least 26 of the past 52 weeks.
4. Carer Support Payment will be delivered by Social Security Scotland from November 2023 with an initial period for new applications as part of a pilot phase in three specific local authority areas. These three local authority areas will be Perth and Kinross, Dundee and the Na h'Eileanan Siar (Western Isles). From spring 2024, there will be a phased approach to the national roll out, with applications to the benefit opened up in more areas as soon as this can be done safely and securely, and the benefit to be available nationally by autumn 2024.
5. The purpose of this instrument is to ensure appropriate consequential amendments are made so that Carer Support Payment will have the same links to other devolved support as Carer's Allowance. This is to support the safe and secure transfer of benefits, and to ensure that carers receiving Carer Support Payment are not disadvantaged compared to carers receiving Carer's Allowance.
6. Legislation will also be introduced before the UK Parliament to enable the necessary legal changes to be made to maintain the links Carer's Allowance has to other forms of support for those in receipt of Carer Support Payment. For areas within the competence of the Scottish Parliament, these Regulations make the necessary changes to Scots law to fulfil the Scottish Government's commitment to a safe and secure transition. For Carer Support Payment, this will mean ensuring that the benefit and benefit recipients are treated consistently with Carer's Allowance, and carers receiving Carer's Allowance.
7. As both social security and Carer's Allowance interact with a number of devolved areas, this instrument will make amendments to the following regulations:

- Social Security (Invalid Care Allowance) Regulations 1976,
- National Assistance (Assessment of Resources) Regulations 1992,
- Advice and Assistance (Scotland) Regulations 1996;
- Individual Learning Account (Scotland) Regulations 2011;

- Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012;
- Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019; and
- Council Tax Reduction (Scotland) Regulations 2021.

8. The amendments to the Social Security (Invalid Care Allowance) Regulations 1976 make changes for Scotland, to mirror changes being made by the Department for Work and Pensions in respect of Carer's Allowance in England and Wales, to provide for a process for carers to agree who should receive support in situations where different carers have applied for Carer's Allowance, the carer element of universal credit, or Carer Support Payment, for care provided to the same person.

9. The amendments to the remaining regulations will ensure that payments and clients of Carer Support Payment are treated consistently with payments and clients of Carer's Allowance. In particular, these will ensure that Carer Support Payment is taken into account in assessing entitlement to support through Council Tax Reduction, and that carers can receive additional amounts in this support in recognition of their caring role. Amendments will also allow carers receiving Carer Support Payment to access support for learning and training through Individual Learning Accounts in the same way as those in receipt of Carer's Allowance, and ensure that income from Carer Support Payment is disregarded in assessments of entitlement to legal aid. Amendments will also be made to Young Carer Grant regulations to provide that a carer will be unable to receive Young Carer Grant if they are already in receipt of Carer Support Payment, as is already the case for carers in receipt of Carer's Allowance.

10. Finally, the regulations also make transitional provision to prevent people from applying for Carer's Allowance under section 70 of the Social Security Contributions and Benefits Act 1992 in areas where they are able to apply for Carer Support Payment instead. This applies initially in the pilot areas set out above. Regulations will be amended as the benefit is rolled out to additional local authority areas.

### **EU Alignment Consideration**

11. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU. In addition to this, the introduction of Carer Support Payment, which this instrument will make amendments in consequence of, is not expected to have any impacts on the Scottish Government's policy to maintain alignment with the EU. The introduction of Carer Support Payment is also not expected to have any impacts on international trade or investment.

12. However, it is worth noting that the principal Carer Support Payment regulations implement the EU rules on social security co-ordination, which are set out in Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 ("the social security co-ordination rules"). The social security co-ordination rules continue to apply to a limited cohort of individuals in the UK by virtue of the EU-UK Withdrawal Agreement, the EEA EFTA Separation Agreement, the Swiss Citizens' Rights Agreement, and certain international

agreements that the UK Government has entered into with Ireland and Gibraltar. Carer's Allowance, which Carer Support Payment is replacing, has been classified as a 'cash sickness benefit' by the EU Administrative Commission which means it can be paid in certain circumstances to UK citizens who are living outside the UK, as well as to certain EU and EEA citizens who are living in the UK.

13. As Carer Support Payment eligibility and rules will largely mirror Carer's Allowance on launch it is anticipated that it will be classified in the same way, as a 'cash sickness benefit'. This decision is yet to be made by the EU Administrative Commission and consideration of the benefit is planned for a future session.

14. In particular, the regulations provide that certain carers who are UK citizens will be able to receive Carer Support Payment while living in the EU or European Economic Area (EEA), Switzerland or Gibraltar, provided the UK is the 'competent state' for payment of 'cash sickness benefits' to them, and they have a 'genuine and sufficient link' to Scotland. Equally, certain carers who are non-UK citizens living in the UK will not be required to meet the past presence test if the UK is the 'competent state' for payment of 'cash sickness benefits' to that person, and they have a 'genuine and sufficient link' to Scotland. Individuals will need to be covered by either the EU-UK Withdrawal Agreement, the EEA EFTA Separation Agreement, the Swiss Citizens' Rights Agreement, or one of the international agreements that the UK Government has entered into with Ireland or Gibraltar for these rules to apply. To be covered by the EU-UK Withdrawal Agreement, carers from the UK would need to have been living in an EU or EEA member state since before the UK left the EU on the 1st January 2021, and carers from the EU or EEA would have to have been living within the UK since before the UK left the EU on 1st January 2021.

## **Consultation**

15. The Scottish Government's Consultation on Social Security in Scotland (2016) sought views from stakeholders and the public on the high-level principles for devolved social security. The consultation ran from 29 July to 30 October 2016.

16. There were 481 responses to the consultation and the majority were supportive of the proposals set out. A key focus from stakeholders was the need to take a safe and secure approach, ensuring that people get the right payments, at the right time, without any disruption.

17. The Scottish Government then consulted on Carer Support Payment (known at the time as Scottish Carer's Assistance) between 28 February and 25 May 2022. The consultation outlined detailed proposals and sought views on Carer Support Payment at launch, extra money for carers in Scotland and proposed future changes.

18. 192 responses were received, from a combination of individuals and advice and carer stakeholder organisations. This was supplemented by a range of stakeholder

events which were ran in tandem with the consultation to further the Scottish Government's engagement with stakeholders.

19. In the consultation, the Scottish Government committed to ensuring that carers would maintain access to benefits and premiums linked to Carer's Allowance when their benefits transition to Carer Support Payment. A safe and secure transfer of support from the Department for Work and Pensions to Social Security Scotland was emphasised by carers and stakeholders responding to the consultation, along with ensuring carers receive all the support they are entitled to. Feedback from stakeholders has also highlighted the importance of protecting support currently linked to Carer's Allowance when replacing this with Carer Support Payment.

### **Impact Assessments**

20. These Regulations do not seek to substantively change the nature of the policy areas that the Regulations interact with, instead they are intended to ensure continuity as Carer's Allowance is replaced with Carer Support Payment. The Scottish Government does not believe there to be any adverse impacts as a result of introducing these regulations as they serve to ensure that recipients of Carer Support Payment can access the same passported benefits as Carer's Allowance recipients.

21. The impact of the introduction of Carer Support Payment, and the transfer of carers' benefits from Carer's Allowance is considered in the impact assessments produced and laid alongside the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023. These include an Equalities Impact Assessment (EQIA), Fairer Scotland Duty Assessment (FSDA), Child Rights and Wellbeing Impact Assessment (CRWIA), Island Communities Impact Assessment (ICIA), Business and Regulatory Impact Assessment (BRIA) and Data Protection Impact Assessment (DPIA).

### **Financial Effects**

22. As above, a Business and Regulatory Impact Assessment has been completed as part of the development of the principal regulations. These regulations will ensure carers in receipt of Carer Support Payment are able to access the same support as those in receipt of Carer's Allowance. The impact of this policy on business is limited and no quantifiable financial effects have been identified.

Scottish Government  
Social Security Directorate  
September 2023

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make consequential, miscellaneous and transitional provision in connection with the introduction of a new form of carer's assistance known as carer support payment, under section 28 of the Social Security (Scotland) Act 2018 ("the 2018 Act"). Carer support payment is provided for by the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 ("the Carer Support Payment Regulations").

Regulation 2 makes miscellaneous amendments to the Social Security (Invalid Care Allowance) Regulations 1976.

Regulations 3 to 8 make consequential amendments to secondary legislation in connection with the introduction of carer support payment. The amendments ensure that individuals who are entitled to carer support payment have the same entitlements and disregards under that legislation as individuals who are entitled to carer's allowance payable under the Social Security Contributions and Benefits Act 1992.

Carer support payment will replace carer's allowance in Scotland for new applicants, and as such these Regulations also make provision in connection with the transition from the pre-existing statutory framework for carer's benefits in Scotland to that provided for under the 2018 Act and the Carer Support Payment Regulations. Regulation 9 provides that no person aged 16 or older who is able to apply for carer support payment due to being resident in the local authority areas of Perthshire and Kinross, City of Dundee or Western Isles during the initial period for applications may apply for carer's allowance. It also provides that no person aged 16 or older who is able to apply for carer support payment due to being resident in Scotland, or otherwise meeting the residence and presence conditions in the Carer Support Payment Regulations after the initial period for applications may apply for carer's allowance.

No business and regulatory impact assessment has been prepared for these Regulations.