

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

SOCIAL SECURITY

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

Made - - - - 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), 41(4)(a), 43(5), 51(1), 52, 81(8) and 95 of the Social Security (Scotland) Act 2018⁽¹⁾ 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.—(1) These Regulations may be cited as the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023.

(2) Subject to paragraph (3), these Regulations come into force on 19 November 2023.

(3) Regulation 13(2) and (3) come into force on 1 October 2024.

(1) 2018 asp 9 ("the 2018 Act"), relevantly amended by paragraphs 2 and 4 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7) and section 12 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18) ("the 2020 Act"). Schedules 2 and 11 of the 2018 Act, respectively make provision about the exercise of powers under sections 28 and 51. Schedule 11 of the 2018 Act was inserted by section 12(4) of the 2020 Act. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and they are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Interpretation

2. In these Regulations—

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

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992⁽²⁾,

“Adult Disability Payment” means disability assistance for adults given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022⁽³⁾,

“Armed Forces Independence Payment” means a payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽⁴⁾,

“Attendance Allowance” means an attendance allowance under—

(a) section 64 of the 1992 Act, or

(b) the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992⁽⁵⁾,

“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),

“carer element of Universal Credit” means the amount awarded by virtue of—

(a) section 12(2)(c) of the Welfare Reform Act 2012⁽⁶⁾, or

(b) article 17(2)(c) of the Welfare Reform (Northern Ireland) Order 2015⁽⁷⁾,

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

(a) section 70 (carer’s allowance) of the 1992 Act⁽⁸⁾, or

(b) section 70 (carer’s allowance) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁹⁾,

“Carer Support Payment” means carer’s assistance given in accordance with 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⁽¹⁰⁾,

“Constant Attendance Allowance” means an allowance under—

(a) section 104 of the 1992 Act, or

(b) article 8 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006⁽¹¹⁾,

“couple” has the meaning given by section 39 of the Welfare Reform Act 2012⁽¹²⁾,

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

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

(a) section 71 of the 1992 Act, or

(2) 1992 c. 4.

(3) S.S.I. 2022/54.

(4) S.I. 2011/517.

(5) S.I. 1992/20, amended by S.I. 1997/69, S.I. 2000/71, S.I. 2005/536, S.I. 2006/359, S.I. 2016/229, S.I. 2017/218 and S.I. 2022/335.

(6) 2012 c. 5, amended by section 16 of the Welfare Reform Act 2016 (c. 7).

(7) S.I. 2015/2006, amended by S.I. 2016/999.

(8) Section 70 was relevantly amended by S.S.I. 2021/174 and S.S.I. 2022/54.

(9) 1992 c. 7, amended by S.I. 1994/370, S.I. 2002/321, S.I. 2011/356, S.I. 2016/228, S.I. 2016/236, S.I. 2021/1301 and S.I. 2022/332.

(10) S.S.I. 2021/174.

(11) S.I. 2006/606, relevantly amended by S.I. 2009/706.

(12) 2012 c. 5, amended by S.I. 2014/3229 and S.I. 2019/1458.

(b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(13),

“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(14), together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993(15), as modified or supplemented from time to time,

“Industrial Injuries Disablement Benefit” means a benefit payable under Part V and section 103 of the 1992 Act,

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(16),

“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(17),

“qualifying disability benefit” means—

- (a) the daily living component of Adult Disability Payment at the standard or enhanced rate,
- (b) the daily living component of Personal Independence Payment,
- (c) the care component of Child Disability Payment at the middle or highest rate,
- (d) the care component of Disability Living Allowance at the middle or highest rate,
- (e) Attendance Allowance,
- (f) Armed Forces Independence Payment, or
- (g) 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,

“relevant EU Regulation” means—

- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971(18) 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) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004(19) 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(20) applies, a Regulation mentioned in paragraph (a) of

(13) 1992 c. 7.

(14) Command Paper 2073 and OJ L 1, 3.1.1994, p.3.

(15) Command Paper 2183 and OJ L 1, 3.1.1994, p.572.

(16) 1995 c. 46, amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(17) S.I. 2015/2006.

(18) OJ L 28, 30.1.1997, p.1, relevantly amended by Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71.

(19) OJ L 166, 30.4.2004, p.1.

(20) S.I. 1974/555.

this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018⁽²¹⁾,

“War Disablement Pension” means—

- (a) any retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Air Force (Constitution) Act 1917⁽²²⁾, the Personal Injuries (Emergency Provisions) Act 1939⁽²³⁾, the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939⁽²⁴⁾, the Polish Resettlement Act 1947⁽²⁵⁾, or Part VII or section 151 of the Reserve Forces Act 1980⁽²⁶⁾,
- (b) without prejudice to paragraph (a) of this definition, any retired pay or pension to which any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003⁽²⁷⁾ applies, and

“Young Carer Grant” means a grant paid under the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019⁽²⁸⁾.

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),
- (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.

(21) 2018 c. 16, relevantly amended by section 25(2) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(22) 1917 c. 51.

(23) 1939 c. 82.

(24) 1939 c. 83.

(25) 1947 c. 19.

(26) 1980 c. 9.

(27) 2003 c. 1, amended by section 19 of the Finance Act 2005 (c. 2) and schedule 1 of the Statute Law (Repeals) Act 2008 (c. 12).

(28) S.S.I. 2019/324.

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 qualifying disability benefit is normally payable (a “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 a week if they are, or are likely to be, regularly engaged for at least 35 hours in an award week in caring for that cared for person.

(3) No individual can be 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 an individual—

- (a) under or by virtue of a contract, unless the contract is of a kind specified by regulations made under section 1(3)(a) of the Carers (Scotland) Act 2016⁽²⁹⁾ 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⁽³⁰⁾,
- (d) is present in the common travel area, and
- (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.

(2) In this Part, “common travel area” has the meaning given in section 1(3) of the Immigration Act 1971⁽³¹⁾.

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

⁽²⁹⁾ 2016 asp 9.

⁽³⁰⁾ 1999 c. 33, relevantly amended by S.I. 2020/1309.

⁽³¹⁾ 1971 c. 77.

- (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 signed at Dublin on 1 February 2019⁽³²⁾, 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⁽³³⁾ 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,
 - (ii) is in receipt of Armed Forces Independence Payment or Constant Attendance Allowance at or above the normal maximum rate with Industrial Injuries Disablement Benefit, or at the basic (full day) rate with a War Disablement Pension, or
 - (iii) is not required to meet a past presence condition by virtue of an exception set out in—
 - (aa) regulation 2A(1) or 2C(1) of the Social Security (Attendance Allowance) Regulations 1991⁽³⁴⁾,
 - (bb) regulation 2A(1) or 2C(1) of the Social Security (Disability Living Allowance) Regulations 1991⁽³⁵⁾,

⁽³²⁾ 2019 CP 49.

⁽³³⁾ OJ C 202, 7.6.2016, p.146.

⁽³⁴⁾ S.I. 1991/2740. Regulation 2A was inserted by S.I. 2013/389. Regulation 2C was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

⁽³⁵⁾ S.I. 1991/2890. Regulation 2A was inserted by S.I. 2013/389. Regulation 2C was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

- (cc) regulation 2A(1), 2B2, 2C(1) or 5 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992**(36)**,
 - (dd) regulation 22 or 23A(1) of the Social Security (Personal Independence Payment) Regulations 2013**(37)**,
 - (ee) regulation 5(8), (10)(b), 5(10A) or 8 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**(38)**, or
 - (ff) regulation 15(7), 17(2), 18 or 19 of the Disability Assistance for Working Age People (Scotland) Regulations 2022**(39)**.
- (7) For the purposes of paragraph (6), an individual or a cared for person has a terminal illness where they are entitled to—
- (a) Disability Living Allowance by virtue of regulation 2(4) of the Social Security (Disability Living Allowance) Regulations 1991,
 - (b) Disability Living Allowance by virtue of regulation 2(3) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992,
 - (c) Attendance Allowance by virtue of section 66 of the 1992 Act,
 - (d) Attendance Allowance by virtue of regulation 2(3) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992**(40)**,
 - (e) Personal Independence Payment by virtue of regulation 21 of the Social Security (Personal Independence Payment) Regulations 2013,
 - (f) Universal Credit by virtue of regulations 16(2), 28(5)(a) or 40(5) read with paragraph 1 of Schedule 9 of the Universal Credit Regulations 2013**(41)**,
 - (g) Employment and Support Allowance by virtue of regulations 7(1)(a), 16(1)(a), 31(1)(a), 45(2) or 85(2)(b) of the Employment and Support Allowance Regulations 2013**(42)**,
 - (h) Personal Independence Payment by virtue of regulation 21 of the Personal Independence Payment Regulations (Northern Ireland) 2016**(43)**,
 - (i) Child Disability Payment by virtue of regulation 15 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,
 - (j) 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),

(36) S.I. 1992/32. Regulations 2A and 2B were inserted by S.I. 2016/229 and regulation 2B was amended by S.I. 2019/129. Regulation 2C was inserted by S.I. 2017/218 and amended by S.I. 2021/269, S.I. 2022/149, S.I. 2022/230 and S.I. 2023/80.

(37) S.I. 2013/377. Regulation 23A was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(38) S.S.I. 2021/174, amended by S.S.I. 2022/41, 2021/146, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(39) S.S.I. 2022/54, amended by S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(40) S.I. 1992/20, amended by S.I. 1997/69, S.I. 2000/71, S.I. 2005/536, S.I. 2006/359, S.I. 2016/229, S.I. 2017/218 and S.I. 2022/335.

(41) S.I. 2013/376, amended by S.I. 2022/60 and S.I. 2014/597.

(42) S.I. 2013/379, amended by S.I. 2022/60.

(43) S.I. 2016/217.

- (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(44) of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA 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, or
- (g) 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 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.
- (9) For the purposes of this regulation—
 - (a) “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971(45),
 - (b) “the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021(46).

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 qualifying 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 for the specific purpose of caring for a cared for person and 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 qualifying disability benefit during that period, and
 - (ii) the arrangements relate to medical treatment—
 - (aa) outside the common travel area,

(44) 1971 c. 77, amended by section 39 of the British Nationality Act 1981 (c. 61) and S.I. 2019/745.

(45) 1971 c. 77.

(46) Published at <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>.

- (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).

Serving members of His Majesty’s forces, civil servants and their family members

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—

- (a) 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
- (b) 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 condition 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(47),
 - (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(48), or

(47) S.S.I. 2009/210.

(48) 2014 asp 8.

- (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⁽⁴⁹⁾, 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⁽⁵⁰⁾, unless—

- (a) M is under the age of 16,
- (b) M is committing an offence under section 8 of the Armed Forces Act 2006 (desertion),
- (c) 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⁽⁵¹⁾, or
- (ii) paying or having previously paid one or more of the following classes of contributions under the Social Security Act 1975⁽⁵²⁾ or the 1992 Act—
- (aa) primary Class 1,
- (bb) Class 2, or
- (cc) Class 3, or
- (d) 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 1992 Act⁽⁵³⁾ in connection with continental shelf operations.

(2) In this regulation—

“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

⁽⁴⁹⁾ 2010 c. 25.

⁽⁵⁰⁾ 2006 c. 52. Section 374 was relevantly amended by section 44(3) of the Defence Reform Act 2014 (c. 20).

⁽⁵¹⁾ 1965 c. 51.

⁽⁵²⁾ 1975 c. 14.

⁽⁵³⁾ Section 120 was relevantly amended by paragraph 30 of schedule 4 of the Petroleum Act 1998 (c. 17), paragraph 26 of schedule 3 and paragraph 8 of schedule 7 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), paragraph 70 of schedule 7 of the Social Security Act 1998 (c. 14), and section 12(2) to (4) of the National Insurance Contributions Act 2014 (c. 7).

(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—

(a) 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

(b) 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.—(1) 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⁽⁵⁴⁾ (“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⁽⁵⁵⁾,

(ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash.

(2) 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 in cash to the person for the purposes of the relevant EU regulation in question.

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—

⁽⁵⁴⁾ 2020 c. 1.

⁽⁵⁵⁾ S.I. 1974/555.

- (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 ("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 in cash,
- (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 in cash 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.

(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.

Individuals in education

13.—(1) An individual who has not reached the age of 20 will not be entitled to Carer Support Payment if they are—

- (a) undertaking a course of full-time education, which is not advanced education and which is not provided by virtue of their employment or any office held by them, or
- (b) being provided with "appropriate full-time education" in England within the meaning of section 4 (appropriate full-time education or training) of the Education and Skills Act 2008⁽⁵⁶⁾, which is not—

(56) 2008 c. 25, amended by schedule 3 of the Children and Families Act 2014(c. 6).

- (i) a course in preparation for a degree, a diploma of higher education, a higher national certificate, a higher national diploma, a teaching qualification, any other course which is of a standard above ordinary national diploma, a national diploma, or national certificate of Edexcel, a general certificate of education (advanced level), or Scottish national qualifications at higher or advanced higher level,
 - (ii) provided by virtue of their employment of any office held by them,
 - (c) undertaking approved training that is not provided by means of a contract of employment.
- (2) This regulation does not apply to an individual if they are—
 - (a) without parental support,
 - (b) entitled to disability living allowance, child disability payment, adult disability payment or personal independence payment and, on a date before the date on which the individual starts receiving education—
 - (i) it has been determined that they have limited capability for work or limited capability for work and work-related activity on the basis of an assessment under Part 5 of the Universal Credit Regulations 2013⁽⁵⁷⁾ or under Part 4 or 5 of the Employment and Support Allowance Regulations 2013⁽⁵⁸⁾, or
 - (ii) they are treated as having limited capability for work under schedule 8 of the Universal Credit Regulations 2013 or limited capability for work and work-related activity under schedule 9 of the Universal Credit Regulations 2013,
 - (c) responsible for a child or a qualifying young person,
 - (d) single and is a foster parent with whom a child is placed,
 - (e) a member of a couple—
 - (i) and the other member of the couple is not undertaking a course of education, or
 - (ii) both of whom are receiving education, and the other member of the couple falls within one of the exceptions set out in paragraph (2)(a) to (d).
- (3) For the purposes of paragraph (2)(a), an individual is without parental support if they are not being looked after by a local authority and—
 - (a) has no parent,
 - (b) cannot live with their parents because—
 - (i) the individual is estranged from them, or
 - (ii) there is a serious risk to the individual's physical or mental health, or that individual would suffer significant harm if the individual lived with them,
 - (c) is living away from their parents, and neither parent is able to support the individual financially because that parent—
 - (i) has a physical or mental impairment,
 - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
 - (iii) is prohibited from entering or re-entering Great Britain.
- (4) For the purposes of this regulation—

⁽⁵⁷⁾ S.I. 2013/376.

⁽⁵⁸⁾ S.I. 2013/379.

“advanced education” means full-time education (which is not school education within the meaning of the Education (Scotland) Act 1980(**59**)) for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national certificate, a higher national diploma, or a teaching qualification, or
- (b) any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level), or Scottish national qualifications at higher or advanced higher level,

“approved training” means arrangements made by the Government—

- (a) in relation to Wales, known as “Traineeships” or “Foundation Apprenticeships”,
- (b) in relation to Scotland, known as “No One Left Behind”, or
- (c) in relation to Northern Ireland, known as “PEACE IV Children and Young People 2.1”, “Training for Success”, or “Skills for Life and Work”,

“arrangements made by the Government” means arrangements—

- (a) in relation to England and Wales, made by the Secretary of State under section 2 of the Employment and Training Act 1973(**60**),
- (b) in relation to Scotland, made—
 - (i) by the Scottish Ministers under section 2 of the Employment and Training Act 1973,
 - (ii) by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990(**61**), or
- (c) in relation to Northern Ireland, made by the Department for Communities or the Department for the Economy under sections 1 and 3 of the Employment and Training Act (Northern Ireland) 1950(**62**),

“foster parent” means—

- (a) under the law of Scotland, a foster carer or kinship carer with whom a child is placed under the Looked After Children (Scotland) Regulations 2009(**63**), or
- (b) under the law of England and Wales and Northern Ireland, a person with whom a child is placed who has an equivalent relationship with the child to those listed under the law of Scotland,

“full-time education”—

- (a) is education undertaken in pursuit of a course, where the average time spent during term time in receiving tuition, engaging in practical work, or supervised study, or taking examinations exceeds 21 hours per week, and
- (b) in calculating the time spent in pursuit of the course, no account is taken of time occupied by meal breaks or spent on unsupervised study, and

“qualifying young person” has the same meaning as regulation 5 of the Universal Credit Regulations 2013.

(59) 1980 c. 44. Section 1(5)(a) was amended by schedule 3 of the Standards in Scotland's Schools etc. Act 2000 (asp 6), schedule 3 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) and schedule 5 of the Children and Young People (Scotland) Act 2014 (asp 8).

(60) 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19), section 29 of the Employment Act 1989 (c. 38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

(61) 1990 c. 35. Section 2 was amended by section 47 and schedule 10 of the Trade Union Reform and Employment Rights Act 1993 (c.19), schedule 26 of the Equality Act 2010 (c. 15) and S.I. 1999/1820.

(62) 1950 c. 29. Section 1 was amended by sections 20 and 21 and schedule 1 of the Employment Act (Northern Ireland) 2010 (c. 12) and S.I. 2016/76. Section 3 was amended by S.I. 2016/76.

(63) S.S.I. 2009/210.

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 schedule 2.

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 or Retirement 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 Allowance or Widow's Benefit or Widowed Parent's Allowance or Widowed Mother's Allowance or Widow's Pension, excluding additional pension,
- (f) Bereavement Allowance,
- (g) War Widow's or Widower's Pension,
- (h) Maternity Allowance,
- (i) Industrial Death Benefit,
- (j) Contribution-based Jobseeker's Allowance,
- (k) Contributory Employment and Support Allowance,
- (l) Training Allowance.

(4) When the cared for person dies and an individual was entitled to Carer Support Payment in respect of that cared for person immediately before their death, the individual's entitlement to Carer Support Payment will continue to be paid until whichever of the following comes first—

- (a) until the first day of the award week following the award week in which the individual ceases to satisfy any of the eligibility requirements set out in regulations 6 to 14, 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.

(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).

(6) For the purposes of this regulation—

“1914-1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914 or under the Injuries in War Compensation Act 1914 (Session 2) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War,

“Bereavement Allowance” means an allowance referred to in section 39B of the 1992 Act subject to the transitional provisions specified in article 4 of the Pensions Act 2014 (Commencement No.10) Order 2017,

“Contribution-based Jobseeker's Allowance” means an allowance under the Jobseekers Act 1995 as amended by the provisions of Part 1 of Schedule 14 to the Welfare Reform Act 2012 that remove references to an income-based allowance, and a contribution-based allowance under the Jobseekers Act as that Act has effect apart from those provisions,

“Contributory Employment and Support Allowance” means an allowance under Part 1 of the Welfare Reform Act 2007 as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 Act that remove references to an income-related allowance, and a contributory allowance under Part 1 of the Welfare Reform Act 2007 as that Part has effect apart from those provisions,

“Incapacity Benefit” means a benefit referred to in section 30A of the 1992 Act,

“Industrial Death Benefit” means a benefit referred to in Part VI of Schedule 7 to the 1992 Act,

“Maternity Allowance” means an allowance referred to in sections 35 and 35B of the 1992 Act,

“Personal Injuries Scheme” means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939 or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939,

“Retirement Pension” means a pension payable under Part II and Part III of the 1992 Act, excluding any additional pension or graduated retirement benefit,

“Service Pensions Instrument” means any instrument described in sub-paragraphs (a) or (b) below in so far, but only in so far, as the pensions or other benefits provided by that instrument are not calculated or determined by reference to length of service, namely:—

- (a) any instrument made in exercise of powers—
 - (i) referred to in section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 (pensions or other benefits for disablement or death due to service in the armed forces of the Crown); or
 - (ii) under section 1 of the Polish Resettlement Act 1947 (pensions and other benefits for disablement or death due to service in certain Polish forces); or
- (b) any instrument under which a pension or other benefit may be paid to a person (not being a member of the armed forces of the Crown) out of public funds in respect of death

or disablement, wound, injury or disease due to service in any nursing service or other auxiliary service of any of the armed forces of the Crown, or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council,

“Severe Disablement Allowance” means an allowance referred to in sections 68 and 69 of the 1992 Act,

“State Pension” means a pension payable under Part 1 of the Pensions Act 2014,

“Training Allowance” means an allowance (whether by way of periodical grants or otherwise) payable out of public funds by a Government department or by or on behalf of Scottish Enterprise, Highlands and Islands Enterprise, the Secretary of State, the National Assembly for Wales to a person for their maintenance, or in respect of any dependant of theirs, for the period, or part of the period, during which they are following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to them or so provided or approved by or on behalf of the Scottish Enterprise, Highlands and Islands Enterprise, the National Assembly for Wales or the said Commission but it does not include—

- (c) an allowance paid by any Government department to or in respect of a person by reason of the fact that they are following a course of full-time education or is training as a teacher, or
- (d) a payment made by or on behalf of Scottish Enterprise, Highlands and Islands Enterprise or the Secretary of State to any person by way of training premium or training bonus in consequence of that person's use of facilities for training provided in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990,

“Unemployability Supplement” includes an increase on account of unemployability under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme,

“War Widow's Pension” means any widow's or surviving civil partner's pension or allowance granted in respect of a death due to service or war injury and payable by virtue of any enactment mentioned in paragraph (a) of the definition of “War Disablement Pension” in regulation 2, or a pension or allowance for a widow or surviving civil partner granted under any scheme mentioned in section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003,

“Widowed Mother's Allowance” means an allowance referred to in section 37 of the 1992 Act,

“Widowed Parent's Allowance” means an allowance referred to in section 39A of the 1992 Act,

“Widow's Pension” means a pension referred to in section 38 of the 1992 Act.

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
- (c) 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 in order to meet, or contribute towards meeting, any liability the individual has to the Secretary of State 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 in accordance with paragraph (2) is to be the difference between—

- (a) the total amount of any relevant benefits the individual or their partner is paid during the abatement period, and
- (b) the total amount of any relevant benefits the individual or their partner would have been paid during the abatement period had their entitlement to those relevant benefits been adjusted as a result of their entitlement to Carer Support Payment (which, for the avoidance of doubt, includes any carer premia, carer additions, or carer elements that they would be entitled to receive).

(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 on the day before 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 on the day before the first day of the award week in which the individual received the first payment of Carer Support Payment at that increased amount,

“Income Support” means a payment made under section 124 of the 1992 Act,

“Income-based Jobseeker's Allowance” means a jobseeker's allowance entitlement to which is based on the individual's satisfying conditions which include those set out in section 3 of the Jobseeker's Act 1995⁽⁶⁴⁾, or a joint-claim jobseeker's allowance,

“Income-related Employment and Support Allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007⁽⁶⁵⁾,

“joint-claim jobseeker's allowance” means a jobseeker's allowance entitlement to which arises by virtue of section 1(2B) of the Jobseeker's Act 1995, and

“Pension Credit” means a pension credit under the State Pension Credit Act 2002⁽⁶⁶⁾, and

“relevant benefit” means—

- (a) Income Support,
- (b) Income-based Jobseeker's Allowance,
- (c) Income-related Employment and Support Allowance, or
- (d) 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 on the day it is received by the Scottish Ministers.

(2) 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),

⁽⁶⁴⁾ 1995 c. 18.

⁽⁶⁵⁾ 2007 c. 5.

⁽⁶⁶⁾ 2002 c. 16.

- (b) where the individual has notified the Scottish Ministers that they wish their entitlement to assistance to begin on a date prior to the day on which their application is treated as made, on the first day of the award week in which that chosen date falls, provided that—
 - (i) the date chosen by the individual is no more than 13 weeks prior to the day on which their application is treated as made, and
 - (ii) the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that chosen date, or
 - (c) where regulation 19 applies (applications made within 13 weeks of a qualifying disability benefit), a date to be chosen by the Scottish Ministers in accordance with that regulation.
- (3) Where the individual does not satisfy the eligibility requirements set out in Part 3 of these Regulations on the chosen date mentioned in paragraph (2)(b), the Scottish Ministers may choose that entitlement to assistance begins on a later date, provided the individual satisfied the eligibility requirements on that later date.
- (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 (2)(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,
 - (b) under paragraph (2)(b) or (c)—
 - (i) begins on the date chosen or the later date in accordance with paragraph (3),
 - (ii) ends on the day on which the determination of entitlement is made.

Applications made within 13 weeks of a qualifying disability 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 disability benefit decision, the Scottish Ministers may determine that entitlement to Carer Support Payment begins on the first day of the award week in which, as a result of that relevant qualifying disability benefit decision, entitlement to that benefit begins, provided the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that date.

(2) Where the individual does not satisfy the eligibility requirements set out in Part 3 of these Regulations on the date on which the relevant qualifying disability benefit decision falls, the Scottish Ministers may determine that entitlement to Carer Support Payment begins on a later date, provided the individual satisfies those eligibility requirements on that later date.

(3) For the purposes of this regulation, “relevant qualifying disability benefit decision” means a decision—

- (a) made by the Secretary of State, the Scottish Ministers, or the Department for Communities in Northern Ireland—
 - (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, the court, the Northern Ireland Appeal Tribunal or the Northern Ireland Social Security and Child Support Commissioner,
awarding a qualifying disability 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 disability 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 individual is treated as having made a claim for Carer's Allowance under section 70 of the 1992 Act for the period starting with that date and ending on the day before 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 1992 Act, 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 paragraph 4 of Part III of schedule 4 of the 1992 Act, 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—

- (a) make the first payment of assistance on a date specified in the notice of determination, and
- (b) inform the individual that any subsequent payment will be made—
 - (i) 4 weekly in arrears, or
 - (ii) weekly in advance.

Temporary stop in entitlement

23.—(1) This paragraph applies where the Scottish Ministers have made a determination without application under regulation 36 (determination following a change of circumstances etc.) that an individual is no longer entitled to Carer Support Payment in respect of a cared for person because—

- (a) the individual's earnings in respect of an award week exceeded the earnings limit set out in regulation 14,
- (b) the cared for person has voluntarily relinquished their entitlement to their qualifying disability benefit and the individual therefore no longer satisfies the requirements of regulation 5(1) (provision of care to a cared for person) in respect of an award week, or
- (c) subject to regulation 40 (temporary break in care), the individual failed to satisfy the requirements of regulation 5(1) (provision of care to a cared for person) in respect of an award week.

(2) Where paragraph (1) applies, the Scottish Ministers are to make a determination without application of the individual's entitlement to Carer Support Payment if, within 26 weeks of the determination mentioned in paragraph (1), the Scottish Ministers establish that the individual satisfies the eligibility requirements set out in Part 3 of these Regulations.

(3) The duty on the Scottish Ministers to make a determination without application mentioned in paragraph (2) does not apply where another individual has been awarded—

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

in respect of the cared for person mentioned in paragraph (1).

(4) This paragraph applies where an individual who has an ongoing entitlement to Carer Support Payment cares for a cared for person whose qualifying disability benefit has been—

- (a) reduced to £0,
- (b) ended as a result of the cared for person being—
 - (i) admitted to a hospital or care home, or
 - (ii) in legal detention,
- (c) suspended as a result of—
 - (i) the circumstances mentioned in—
 - (aa) regulation 26A(3)(a) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021(67), or
 - (bb) regulation 38(3)(a) of the Disability Assistance for Working Age People (Scotland) Regulations 2022(68),
 - (ii) a failure to provide information in accordance with—
 - (aa) regulation 17 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(69),
 - (bb) regulation 17 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(70),
 - (cc) regulation 45 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(71), or
 - (dd) regulation 44 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016(72), or
 - (iii) the circumstances mentioned in—
 - (aa) regulation 16(3)(a)(i) or (ii) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999,
 - (bb) regulation 16(3)(a)(i) or (ii) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(73),
 - (cc) regulation 44(2)(a)(i) or (ii) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, or

(67) S.S.I. 2021/174. Regulation 26A was inserted by S.S.I. 2022/41.

(68) S.S.I. 2022/54.

(69) S.I. 1999/991, amended by S.I. 1996/206, S.I. 1999/2570, S.I. 2008/1554, S.I. 2010/840 and S.I. 2012/824.

(70) S.R. 1999/162, amended by S.I. 1999/2588, S.R. 2008/286, S.R. 2010/200 and S.R. 2012/140.

(71) S.I. 2013/381.

(72) S.R. 2016/221.

(73) Amended by S.I. 1999/2588.

(dd) regulation 43(2)(a)(i) or (ii) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016.

(5) Where paragraph (4) applies, the Scottish Ministers are to make a determination without receiving an application that the individual is no longer entitled to Carer Support Payment.

(6) Where paragraph (4)(a) or (b) applies, the determination comes into effect on the first day of the award week following the award week in which the cared for person's qualifying disability benefit has been ended or reduced to £0.

(7) Where paragraph (4)(c) 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 disability benefit has been suspended for 4 weeks.

(8) Where paragraph (5) applies, the Scottish Ministers are to make a determination without application of the individual's entitlement to Carer Support Payment if, within 26 weeks of the determination mentioned in paragraph (5), the Scottish Ministers establish that—

- (a) a determination is made that the value of the qualifying disability benefit that is to be given to the cared for person is an amount more than £0, or
- (b) the suspension of the cared for person's qualifying disability benefit mentioned in paragraph (4)(c) is ended and the cared for person would have been entitled to the qualifying disability benefit during the period of suspension.

(9) Where paragraph (2) applies, the individual's entitlement to assistance begins—

- (a) where the individual notifies the Scottish Ministers that they satisfy the eligibility requirements set out in Part 3 of these Regulations within 13 weeks of that change occurring, on the first day of the award week in which that change occurred,
- (b) where the individual notifies the Scottish Ministers that they satisfy the eligibility requirements set out in Part 3 of these Regulations later than 13 weeks of the change occurring, but where the Scottish Ministers consider that the individual has good reason for not notifying the change within 13 weeks, on the first day of the award week in which that change occurred,
- (c) where the individual notifies the Scottish Ministers that they satisfy the eligibility requirements set out in Part 3 of these Regulations later than 13 weeks of the change occurring and where the Scottish Ministers do not consider that the individual has good reason for not notifying that change within 13 weeks, on the first day of the award week in which the individual notified that change, or
- (d) in any other case, the first day of the award week in which the individual satisfies the eligibility requirements set out in Part 3 of these Regulations.

(10) Where paragraph (8)(a) applies, the individual's entitlement to assistance begins—

- (a) where the individual notifies the Scottish Ministers that the cared for person's qualifying disability benefit is paid at an amount more than £0 within 13 weeks of that change occurring, on the first day of the award week in which that change occurred,
- (b) where the individual notifies the Scottish Ministers that the cared for person's qualifying disability benefit is paid at an amount more than £0 later than 13 weeks of the change occurring, but where the Scottish Ministers consider that the individual has good reason for not notifying the change within 13 weeks, on the first day of the award week in which that change occurred,
- (c) where the individual notifies the Scottish Ministers that the cared for person's qualifying disability benefit is paid at an amount more than £0 later than 13 weeks of the change occurring and where the Scottish Ministers do not consider that the individual has good

reason for not notifying that change within 13 weeks, on the first day of the award week in which the individual notified that change, or

- (d) in any other case, the first day of the award week in which the cared for person's qualifying disability benefit is paid at an amount more than £0.

(11) Where paragraph (8)(b) applies, the individual's entitlement to assistance begins—

- (a) where it is determined that during the period of suspension, the cared for person would have been entitled to a qualifying disability benefit in respect of that period, on the first day of the award week in which the cared for person's entitlement to the qualifying disability benefit begins,
- (b) in any other event, on the first day of the award week in which the suspension is ended.

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 application.

(2) Where, but for regulation 5(3) (provision of care to a cared for person), two or more individuals would be entitled to Carer Support Payment in respect of the same cared for person for the same period, only one of them may be entitled, being either—

- (a) one of them as they may jointly agree in accordance with paragraph (5), or
- (b) in absence of such agreement, one of them as may be determined by the Scottish Ministers in accordance with paragraph (6).

(3) Where, but for regulation 5(3) (provision of care to a cared for person), a person ('carer A') would be entitled to Carer's Allowance payable by the Scottish Ministers and another person ('carer B') would be entitled to Carer Support Payment in respect of the same cared for person for the same period, carer B will only be entitled if—

- (a) carer A and carer B jointly agree in accordance with paragraph (5) that carer A will not be entitled, or
- (b) in absence of such agreement, the Scottish Ministers determine that carer B is or remains entitled to Carer Support Payment in respect of that period.

(4) Where, but for regulation 5(3) (provision of care to a cared for person), a person ('carer A') would have a relevant entitlement and another person ('carer B') would be entitled to Carer Support Payment in respect of the same cared for person for the same period, carer B will only be entitled to Carer Support Payment if—

- (a) carer A and carer B jointly agree in accordance with paragraph (5) that carer A will not have a relevant entitlement, or
- (b) in absence of such agreement, the Scottish Ministers determine that carer B is or remains entitled to Carer Support Payment in respect of that period, following—

(i) in a case where the relevant entitlement is to—

(aa) a Carer's Allowance payable by the Secretary of State under section 70 of the 1992 Act,

(bb) the carer element of Universal Credit payable by the Secretary of State under section 12(2)(c) of the Welfare Reform Act 2012,

consultation with the Secretary of State,

(ii) in a case where the relevant entitlement is to—

- (aa) a Carer's Allowance payable by the Department for Communities in Northern Ireland under section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,
- (bb) the carer element of Universal Credit payable by the Department for Communities in Northern Ireland under Article 17(2)(c) of the Welfare Reform (Northern Ireland) Order 2015,

consultation with the Department for Communities in Northern Ireland.

(5) An agreement under paragraph (2)(a), (3)(a) or (4)(a) is to be made by giving the Scottish Ministers a notice in writing signed by the individuals mentioned in paragraph (2), (3) or (4) as the case may be, specifying one of them as the individual to be entitled to assistance.

(6) When making a determination under paragraph (2)(b), (3)(b) or (4)(b), the Scottish Ministers must have regard to factors including but not limited to—

- (a) the best interests of the cared for person,
- (b) whether any of the individuals mentioned in paragraph (2), (3) or (4)—
 - (i) are family members of the cared for person,
 - (ii) live with or near the cared for person,
 - (iii) receive any benefits on behalf of, or as a result of their responsibility for, the cared for person.

(7) The Scottish Ministers may, having considered the factors set out in paragraph (6), make a determination without application that—

- (a) one of the individuals mentioned in paragraph (2) or (3), or
- (b) following consultation with the Secretary of State or, as the case may be, the Department for Communities in Northern Ireland, carer B mentioned in paragraph (4), who has ongoing entitlement to Carer Support Payment, is no longer entitled to Carer Support Payment.

(8) For the purposes of this regulation, an individual has a “relevant entitlement” if the individual is entitled to—

- (a) a Carer's Allowance, or
- (b) the carer element of universal credit.

(9) Where paragraph (2) applies at the same time as paragraphs (3) or (4), the Scottish Ministers must make a determination under paragraph (2) before making a determination under paragraph (3) or (4).

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 2018 Act.

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, 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 a 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 should have notified the Scottish Ministers of the change, where 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, 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) or (b) (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, or
 - (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) in any other case, 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 a 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⁽⁷⁴⁾ applies, or

⁽⁷⁴⁾ 2018 asp 9, amended by section 12(3) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18) ("the 2020 Act").

- (b) the Scottish Ministers have made arrangements (whether under section 85B of the 2018 Act⁽⁷⁵⁾ 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.

(75) Section 85B was inserted by section 2(4) of the 2020 Act.

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⁽⁷⁶⁾ 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)⁽⁷⁷⁾ of the 2018 Act,
 - (d) the circumstances mentioned in regulation 29(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.

⁽⁷⁶⁾ Section 54(1) was amended by section 12(3)(a) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 ([asp 18](#)) ("the 2020 Act").

⁽⁷⁷⁾ Section 54(2) was amended by section 12(3)(c) of the 2020 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,
- (b) 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,
- (c) that the individual has died,
- (d) that the cared for person has died,
- (e) that the individual has notified the Scottish Ministers that they wish for their entitlement to assistance to begin on a date prior to the day on which their application was treated as made, provided that—
 - (i) the date chosen by the individual is no more than 13 weeks prior to the day on which their application was treated as made, and
 - (ii) the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that chosen date,
- (f) 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 schedule 1, 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(78) ("the 1999 Regulations"),
 - (ii) a supersession under regulation 6 of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 ("the 1998 Act")(79),
 - (iv) a redetermination under section 13 of the 1998 Act,
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998(80) ("the 1998 Order"),
 - (vii) a supersession under article 11 of the 1998 Order,
 - (viii) an appeal under article 13 of the 1998 Order, or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order,
- (g) 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—

(78) S.I. 1999/991, amended by S.I. 1999/1623, S.I. 1999/1662, S.I. 1999/2750, S.I. 1999/2677, S.I. 2000/897, S.I. 2002/428, S.I. 2002/1379, S.I. 2002/1703, S.I. 2003/916, S.I. 2003/1050, S.I. 2003/1886, S.I. 2005/337, S.I. 2005/2677, S.I. 2006/832, S.I. 2007/2470, S.I. 2007/2582, S.I. 2008/1554, S.I. 2008/2667, S.I. 2008/2683, S.I. 2009/659, S.I. 2009/1490, S.I. 2010/424, S.I. 2010/840, S.I. 2010/1160, S.I. 2011/2425, S.I. 2012/824, S.I. 2012/913, S.I. 2012/919, S.I. 2012/2568, S.I. 2012/2575, S.I. 2013/2380, S.I. 2014/1097, S.I. 2015/339, S.I. 2015/1985, S.I. 2016/1145, S.I. 2017/422, S.I. 2017/1015, S.I. 2021/786, S.I. 2022/177 and S.I. 2022/1329.

(79) 1998 c. 14. Section 12 was amended by schedules 7 and 10 of the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), sections 102 and 105 of the Welfare Reform Act 2012 (c. 5), S.I. 2008/2833 and S.I. 2014/886.

(80) S.R. 1998/1506, amended by S.I. 1999/671, S.I. 2014/886 and S.I. 2015/2006 (N.I. 1).

- (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”),
- (ii) a supersession under regulation 6 of the 1999 Regulations,
- (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”),
- (iv) a re-consideration under section 13 of the 1998 Act,
- (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
- (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998⁽⁸¹⁾ (“the 1998 Order”),
- (vii) a supersession under article 11 of the 1998 Order,
- (viii) an appeal under article 13 of the 1998 Order, or
- (ix) an appeal to the Commissioner under article 15 of the 1998 Order.

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) any information—
 - (i) provided in the application that led to the original determination,
 - (ii) 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”),

⁽⁸¹⁾ S.R. 1998/1506, amended by S.I. 1999/671, S.I. 2014/886 and S.I. 2015/2006 (N.I. 1).

- (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) any information—
 - (i) provided in the application that led to the original determination, and
 - (ii) 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) is to 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 award 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 mentioned 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, as notified by the individual 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 38 (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 is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act, 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) 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 a 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 10

Transfer from Carer's Allowance to Carer Support Payment

Transfer from Carer's Allowance to Carer Support Payment

44. Part 2 of schedule 1 makes provision about transferring from Carer's Allowance to Carer Support Payment.

PART 11

Initial period for applications

Initial period for applications

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

PART 12

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 schedule 1 on the date their application is received by the Scottish Ministers.

(2) In this regulation and in Part 1 of schedule 1, “initial period for applications” means the period beginning with 19 November 2023 and ending with 30 September 2024.

Exclusion to transitory provision

47.—(1) An individual who has made a claim for Carer's Allowance prior to 19 November 2023 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 1992 Act⁽⁸²⁾,
- (b) been withdrawn in accordance with regulation 5(2) of the Social Security (Claims and Payments) Regulations 1987⁽⁸³⁾, or
- (c) otherwise is no longer to be decided by the Secretary of State as mentioned in subparagraph (a).

⁽⁸²⁾ 1992 c. 4, amended by S.S.I. 2021/174 and S.S.I. 2022/54.

⁽⁸³⁾ S.I. 1987/1968.

PART 13

Consequential amendments

Consequential amendments

- 48.** The amendments specified in Part 3 of schedule 1 have effect.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE 1

Regulations 44, 45 and 48

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.

Local authority areas for initial period for applications

2. The local authority areas specified for the purposes of regulation 45 (initial period for applications) are—

- (a) Perthshire and Kinross,
- (b) City of Dundee, and
- (c) the Western Isles.

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, and
- (b) who is—
 - (i) ordinarily resident in Scotland, or
 - (ii) someone to whom regulation 6(3) (residence and presence conditions) 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, and

“transferring individual” means an 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—

- (a) to a transferring individual who, before a determination is made under paragraph 5(1)—
 - (i) ceases to be ordinarily resident in Scotland, or
 - (ii) cares for a cared for person who dies, or
- (b) in error where the individual is neither—
 - (i) ordinarily resident in Scotland, nor
 - (ii) 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) 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.

(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 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)—

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023* ISBN 978-0-11-105809-1

- (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 no 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, and
 - (iii) notified the transferring individual of the extension and reason for it.
- (6) Where the Scottish Ministers make a determination under paragraph (1) that a transferring individual is entitled to Carer Support Payment, for the week in which that determination takes place, “award week” means—
- (a) where the individual cares for a cared for person who is in receipt of Constant Attendance Allowance, a period of 4 days, starting on the Wednesday of that week and ending on the following Saturday, or
 - (b) in all other cases, a period of 6 days, starting on the Monday of that week and ending on the following Saturday.

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 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) inform the transferring individual that any subsequent payment will be made—
 - (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) weekly in advance, provided that the individual has informed the Scottish Ministers that they wish to be paid weekly in advance before the date specified in the notice of intention to transfer given to the individual in accordance with paragraph 4(1) of schedule 1,
 - (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 under regulation 33 (persons unable to act) of the Social Security (Claims and Payments) Regulations 1987⁽⁸⁴⁾ 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 a person in respect of whom the Scottish Ministers have already—

- (a) appointed to act on behalf of that transferring individual under section 85B of the 2018 Act, or
- (b) 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⁽⁸⁵⁾ or paragraph 14 (appointees) of Part 3 of the schedule of the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽⁸⁶⁾.

PART 3

Consequential amendments

Amendment of the 2018 Act

9.—(1) Section 81 of the 2018 Act is amended in accordance with sub-paragraphs (2) to (5).

(2) In subsection (2), for paragraph (a) substitute—

“(a) in receipt of—

- (i) a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992⁽⁸⁷⁾, or
- (ii) carer support payment under the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (S.S.I. 2023/XXX), and”.

(3) In subsection (9), for paragraph (a) substitute—

“(a) in receipt of—

- (i) a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, or

⁽⁸⁴⁾ S.I. 1987/1968, amended by S.I. 1991/2741, S.I. 1999/2572, S.I. 2002/2441, S.I. 2005/337, S.I. 2007/2470, S.I. 2013/458 and S.I. 2021/804.

⁽⁸⁵⁾ S.S.I. 2022/54.

⁽⁸⁶⁾ S.S.I. 2021/174.

⁽⁸⁷⁾ 1992 c. 4.

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023* ISBN 978-0-11-105809-1

- (ii) carer support payment under the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (S.S.I. 2023/XXX),”.
- (4) In subsection (11), for paragraph (a) substitute—
 - “(a) in receipt of—
 - (i) a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, or
 - (ii) carer support payment under the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (S.S.I. 2023/XXX),”.
- (5) In subsection (13), for paragraph (a) substitute—
 - “(a) in receipt of—
 - (i) a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, or
 - (ii) carer support payment under the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (S.S.I. 2023/XXX),”.

Amendment of the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020

10.—(1) The Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020~~(88)~~ are amended in accordance with sub-paragraph (2).

- (2) In regulation 7(b), for paragraph (i) substitute—
 - “(i) the Scottish Ministers establish that the individual has received an award of—
 - (aa) carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992~~(89)~~,
 - (bb) carer support payment under the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (S.S.I. 2023/XXX),”.

Amendment of the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019

11.—(1) The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019~~(90)~~ are amended in accordance with sub-paragraph (2).

- (2) In regulation 7(1) (further eligibility conditions)—
 - (a) after “young carer grant if”, insert “at any point in the qualifying period or”, and
 - (b) omit “in respect of any of the persons being cared for”.

SCHEDULE 2

Regulation 14

Calculation of earnings

Interpretation

- 1. In this schedule—

⁽⁸⁸⁾ S.S.I. 2020/475.

⁽⁸⁹⁾ Section 70 was relevantly amended by S.I. 2002/1457.

⁽⁹⁰⁾ S.S.I. 2019/324, amended by S.S.I. 2020/99 and S.S.I. 2020/475.

“basic rate” means the rate of income tax of that name determined in accordance with section 6(2) of the Income Tax Act 2007⁽⁹¹⁾,

“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if they are a member of a family, to them or any other member of their family, for a charge which includes the provision of that accommodation and at least some cooked or prepared meals (which are provided by a person other than the person to whom the accommodation is provided or a member of their family) and are consumed in that accommodation, or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of theirs or of any other member of their family, or other than on a commercial basis,

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple,

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the individual as their home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated,

“employed earner” means a person who is in gainful employment in Great Britain under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under schedule E of the Income and Corporation Taxes Act 1988 and includes—

- (a) a person in any employment which would be such employment if it were in Great Britain, and
- (b) a person in any such employment which, in accordance with the provisions of the 1992 Act and of any regulations made under it, is to be disregarded in relation to liability for contributions,

“employment” includes any trade, business, profession, office or vocation,

“individual” means any person making an application for Carer Support Payment or transferring from Carer's Allowance to Carer Support Payment under these Regulations,

“maximum weekly amount” means the maximum weekly amount which, on the date on which the payment of compensation is made, is specified in section 227(1) of the Employment Rights Act 1996⁽⁹²⁾,

“occupational pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993⁽⁹³⁾,

“pay period” means the period in respect of which an individual is, or expects to be, normally paid by their employer, being a week, a fortnight, 4 weeks, a calendar month, or such other period as the case may be,

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993 and, in the case of a self-employed earner, includes a scheme approved by the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988,

“relevant earnings limit” means the earnings limit set out in regulation 14 of these Regulations,

(91) 2007 c. 3, relevantly amended by section 5 of the Finance Act 2008 (c. 9) and schedule 2 of the Finance Act 2009 (c. 10).

(92) 1996 c. 18. Section 227 was amended by schedule 9 of the Employment Relations Act (c. 26), schedule 7 of the Employment Act 2002 (c. 22), schedule 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) and S.I. 2023/318.

(93) 1993 c. 48. Section 1 was amended by section 239 of the Pensions Act 2004 (c. 35), schedule 27 of the Finance Act 2007 (c. 11) and S.I. 2019/192.

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988,

“Scottish basic rate” means the rate of income tax of that name calculated in accordance with section 6A of the Income Tax Act 2007⁽⁹⁴⁾,

“Scottish taxpayer” has the same meaning as in Chapter 2 of Part 4A of the Scotland Act 1998⁽⁹⁵⁾,

“self-employed earner” means a person who is in gainful employment in Great Britain otherwise than as an employed earner and includes a person in any—

- (a) employment which would be such employment if it were in Great Britain, and
- (b) such employment which, in accordance with the provisions of the 1992 Act and of any regulations made under it, is to be disregarded in relation to liability for contributions, and

“year of assessment” means, with reference to any income tax, the year for which such tax was granted by any enactment granting income tax.

Calculation of earnings

2.—(1) For the purposes of regulation 14 (earnings limit), the earnings of an individual are to be calculated by determining the weekly amount of their earnings in accordance with this schedule.

(2) The amount of an individual's earnings for any period are the whole of those earnings (including any earnings which they are treated as possessing under paragraph 3 (notional earnings)) except in so far as paragraphs 9 (calculation of net earnings of employed earners) and 12 (calculation of net profit of self-employed earners) provide that certain sums are to be disregarded or deducted.

Notional earnings

3.—(1) Where an individual's earnings are not ascertainable at the date on which the Scottish Ministers are determining the individual's entitlement to Carer Support Payment or considering whether they are required to make a determination of the individual's entitlement to Carer Support Payment without receiving an application, the individual is treated as possessing such earnings as is reasonable in the circumstances having regard to the number of hours worked and the earnings paid for comparable employment.

(2) Where an individual is treated as possessing any earnings under sub-paragraph (1), this schedule applies for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which that individual does possess, except that paragraph 9(3) (calculation of net earnings of employed earners) does not apply and their net earnings are calculated by taking into account the earnings which they are treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax in the year of assessment less only the personal reliefs to which the individual is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are appropriate to their circumstances; but if the period over which those earnings are to be taken into account is less than a year, the earnings to which the basic rate, or Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this paragraph are calculated on a pro rata basis,
- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the 1992 Act, calculated by

⁽⁹⁴⁾ 2007 c. 3. Section 6A was inserted by schedule 38 of the Finance Act 2014 (c. 26).

⁽⁹⁵⁾ 1998 c. 46.

applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act, and

- (c) one half of any sum payable by the individual in respect of a pay period by way of a contribution towards an occupational or personal pension scheme,
- (d) any care charges to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their notional earnings.

Rounding of fractions

4. Where any calculation under this schedule results in a fraction of a penny that fraction is, if it would be to individual's advantage, treated as a penny, otherwise it is disregarded.

Calculation of earnings of employed earners

5.—(1) Earnings derived from employment as an employed earner are calculated or estimated over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with paragraph 7 (calculation of weekly amount of earnings).

(2) Subject to sub-paragraphs (3) and (5) to (7), the period over which a payment is to be taken into account—

- (a) in a case where it is payable in respect of a period, is a period equal to the total number of award weeks in the period commencing on the date on which the earnings are treated as paid under paragraph 6 (date on which earnings are treated as paid) and ending on the day before the date on which earnings of the same kind (excluding earnings of the kind mentioned in paragraph 8(1)(a) to (j)) and from the same source would, or would if the employment was continuing, next be treated as paid under that paragraph, or
- (b) in any other case, and where it would cause the individual's earnings to exceed the relevant earnings limit if it were taken into account only in respect of the period in which it was received, is a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{P}{Q} + R$$

where—

P is the net earnings,

Q is the amount of the relevant earnings limit plus one penny, and

R is the total of the sums which would fall to be disregarded or deducted as appropriate under paragraph 9(2) (calculation of net earnings of employed earners),

and that period begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this sub-paragraph, fall to be taken into account overlap, wholly or partly, those earnings are taken into account over a period—

- (a) equal to the aggregate length of those periods, and
- (b) beginning with the earliest date on which any part of those earnings would otherwise be treated as paid under paragraph 6 (date on which earnings are treated as paid).

(4) In a case to which paragraph (3) applies, earnings under paragraph 8 (earnings of employed earners) are taken into account in the following order of priority—

- (a) earnings normally derived from the employment,
- (b) any payment to which paragraph 8(1)(b) or (c) applies,
- (c) any payment to which paragraph 8(1)(i) applies,
- (d) any payment to which paragraph 8(1)(d) applies.

(5) Where earnings to which paragraph 8(1)(b) to (d) (earnings of employed earners) applies are paid in respect of a part of a day, those earnings are taken into account over a period equal to a week.

(6) Where earnings to which paragraph 8(1)(i)(i) (earnings of employed earners) applies are paid in respect of or on the termination of any employment which is not part-time employment, the period over which they are taken into account is—

- (a) a period of weeks equal to the number of weeks (less any fraction of a whole number) obtained by dividing the net earnings by the maximum weekly amount which, on the date on which the payment of earnings is made, is specified in section 227(1) of the Employment Rights Act 1996⁽⁹⁶⁾, or
- (b) a period equal to the length of the specified period,

whichever is the shorter, and that period begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

(7) In this paragraph—

“part-time employment” means—

- (a) subject to the provisions of heads (b) to (d) of this definition, employment in which a person is engaged, or, where their hours of work fluctuate, they are engaged on average for less than 16 hours a week, being work for which payment is made or which is done in expectation of payment,
- (b) subject to head (c) of this definition, the number of hours for which an individual is engaged in work is determined—
 - (i) where no recognisable cycle has been established in respect of an individual's work, by reference to the number of hours, or, where those hours are likely to fluctuate, the average of the hours, which they are expected to work in a week,
 - (ii) where the number of hours for which they are engaged fluctuates, by reference to the average of hours worked over—
 - (aa) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the individual does not work, those periods but disregarding any other absences),
 - (bb) in any other case, the period of 5 weeks immediately before the date on which an application for Carer Support Payment is treated as received, or the date on which a determination without application falls to be made, or such other length of time as may, in the particular case, enable the individual's average hours of work to be determined more accurately,
- (c) where for the purpose of head (b)(ii)(aa) of this definition, an individual's recognisable cycle of work at a school, other education establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which they do not work, those periods and any other periods not forming part of such holidays or vacations during which they are not required to work is disregarded in establishing the average hours for which they are engaged in work,

⁽⁹⁶⁾ 1996 c. 18. Section 227 was amended by schedule 9 of the Employment Relations Act (c. 26), schedule 7 of the Employment Act 2002 (c. 22), schedule 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) and S.I. 2023/318.

- (d) for the purposes of heads (a) and (b) of this definition, in determining the number of hours for which an individual is engaged in work, that number includes any time allowed to that individual by their employer for a meal or for refreshment, but only where that individual is, or expects to be, paid earnings in respect of that time,

“specified period” means a period equal to—

- (a) a week or such number of weeks (less any fraction of a whole number) as comprise the period of notice which is applicable to an individual, or would have been applicable if it had not been waived, less
- (b) any part of that period during which the individual has continued to work in the employment in question or in respect of which they have received any payment in lieu of notice,

and for the purposes of this definition “period of notice” means the period of notice of termination of employment to which an individual is entitled by statute or by contract, whichever is the longer, or, if they are not entitled to such notice, the period of notice which is customary in the employment in question.

Date on which earnings are treated as paid

6. Earnings to which paragraph 5 (calculation of earnings of employed earners) or 10(2) (calculation of earnings of self-employed earners) applies are treated as paid on the first day of the award week in which the payment is received.

Calculation of weekly amount of earnings

7.—(1) For the purposes of paragraph 5 (calculation of earnings of employed earners), subject to sub-paragraphs (2) to (4), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is the amount of that payment,
- (b) exceeds a week, the weekly amount is determined—
 - (i) where that period is a month, by multiplying the amount of that payment by 12 and dividing the product by 52,
 - (ii) where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
 - (iii) where that period is a year, by dividing the amount of the payment by 52,
 - (iv) for any other period, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment of earnings from a particular source is or has been paid regularly and that payment falls to be taken into account in the same award week as a payment of the same kind from the same source, the amount of those earnings to be taken into account in any one award week will not exceed the weekly amount determined under sub-paragraph (1)(a) or (b), as the case may be, of the payment which under paragraph 6 (date on which earnings are treated as paid) is treated as paid first.

(3) Where the amount of the individual’s net earnings fluctuates and has changed more than once, or an individual’s regular pattern of work is such that they do not work every week, the application of sub-paragraphs (1) and (2) may be modified so that the weekly amount of their earnings is determined by reference to their average weekly earnings—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle,

- (b) if the individual has provided the Scottish Ministers with payslips, over the period to which the payslips relate, up to a maximum period of 26 weeks, or
- (c) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the individual's average weekly earnings to be determined more accurately.

Earnings of employed earners

8.—(1) Subject to sub-paragraphs (2) and (3), “earnings”, in the case of employment as an employed earner means the remuneration or profit derived from the employment and includes—

- (a) any bonus or commission,
 - (b) any payment in lieu of remuneration except any periodic sum paid to an individual on account of the termination of their employment by reason of redundancy,
 - (c) any payment in lieu of notice,
 - (d) any holiday pay except where it is payable more than 4 weeks after the termination or interruption of employment,
 - (e) any payment by way of a retainer,
 - (f) any payment made by the individual's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer in respect of—
 - (i) travelling expenses incurred by the individual between their home and place of employment,
 - (ii) expense incurred by the individual under arrangements made for the care of a member of their family owing to the individual's absence from home,
 - (g) any award of compensation made under section 112(4) (the remedies: orders and compensation) or 117(3)(a) (enforcement of order and compensation) of the Employment Rights Act 1996 (remedies and compensation),
 - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes),
 - (i) where—
 - (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable,
 - (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation,
 - (j) any remuneration paid by or on behalf of an employer to the individual in respect of a period during which the individual is—
 - (i) on maternity leave or paternity leave,
 - (ii) on adoption leave, or
 - (iii) absent from work because they are ill.
- (2) For the purposes of sub-paragraph (1)(i)(i), the “deductible remainder”—
- (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction, and
 - (b) is equal to the difference between—
 - (i) the amount of the compensation, and
 - (ii) the product of the maximum weekly amount multiplied by the whole number.

- (3) “Earnings” do not include any payment in respect of expenses—
- (a) wholly, exclusively and necessarily incurred in the performance of the duties of the employment, or
 - (b) arising out of the individual participating as a service user.
- (4) The reference in sub-paragraph (3)(b) to the individual participating as a service user is to—
- (a) a person who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services,
 - (b) a person who is being consulted by or on behalf of—
 - (i) the Secretary of State or the Scottish Ministers in relation to any of their functions in the field of social security or child support under section 2 of the Employment and Training Act 1973⁽⁹⁷⁾, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person, or
 - (c) the carer of a person consulted under sub-paragraphs (a) or (b).
- (5) In this paragraph—
- “adoption leave” means a period of absence from work on ordinary or additional adoption leave under section 75A or 75B of the Employment Rights Act 1996⁽⁹⁸⁾,
- “compensation” means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to them had they not waived their right to receive it, other than—
- (a) any payment specified in sub-paragraph (1)(a) to (h),
 - (b) any payment specified in sub-paragraph (3)
 - (c) any redundancy payment within the meaning of section 135 of the Employment Rights Act 1996,
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme,
- “maternity leave” means a period during which a person is absent from work because they are pregnant or have given birth to a child, and at the end of which they have the right to return to work either under the terms of their contract or under Part 8 of the Employment Rights Act 1996,
- “part-time employment” has the same meaning as in paragraph 5(7) (calculation of earnings of employed earners),

⁽⁹⁷⁾ 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19), section 29 of the Employment Act 1989 (c. 38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

⁽⁹⁸⁾ 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

“paternity leave” means a period of absence from work on leave under section 80A(99) (entitlement to paternity leave: birth) or 80B(100) (entitlement to paternity leave: adoption) of the Employment Rights Act 1996.

Calculation of net earnings of employed earners

9.—(1) For the purposes of paragraphs 2 (calculation of earnings) and 5 (calculation of earnings of employed earners) the earnings of an individual derived from employment as an employed earner to be taken into account are, subject to sub-paragraphs (2) and (3), their net earnings.

(2) There is disregarded or deducted as appropriate from an individual's net earnings—

- (a) any sum, where applicable, specified in paragraph 14 (sums to be disregarded in the calculation of earnings), and
- (b) any care charges to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their net earnings less those sums, if any, specified in paragraph 14 which are disregarded.

(3) For the purposes of sub-paragraph (1) net earnings are calculated by taking into account the gross earnings of the individual from that employment, less—

- (a) any amount deducted by way of—
 - (i) income tax,
 - (ii) primary Class 1 contributions under the 1992 Act, and
- (b) one half of any sum paid by the individual in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Calculation of earnings of self-employed earners

10.—(1) Except where paragraph (2) applies, where an individual's earnings consist of earnings from employment as a self-employed earner the weekly amount of their earnings are determined by reference to their average weekly earnings from that employment—

- (a) over a period of one year, or
- (b) where the individual has been engaged in that employment for less than a year or there has been a change which is likely to affect their normal pattern of earnings, over such other period as may, in any particular case, enable the weekly amount of their earnings to be determined more accurately.

(2) Where the individual's earnings—

- (a) consist of royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark, and
- (b) the individual is the first owner of the copyright, design, patent or trade mark,

those earnings are taken into account over a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{S}{T} + U$$

where—

S is the earnings,

(99) Inserted by the Employment Act 2002 c. 22.

(100) Inserted by the Employment Act 2002 c. 22.

T is the relevant earnings limit plus one penny, and

U is the total of the sums which would fall to be disregarded or deducted as appropriate under paragraph 12(2) (calculation of net profit of self-employed earners).

(3) The period mentioned in sub-paragraph (2) begins on the date on which the payment is treated as paid under paragraph 6 (date on which earnings are treated as paid).

Earnings of self-employed earners

11. “Earnings”, in the case of employment as a self-employed earner, means the net profits of the employment and includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽¹⁰¹⁾ to the individual for the purpose of assisting them in carrying on their business.

Calculation of net profit of self-employed earners

12.—(1) For the purposes of paragraphs 2 (calculation of earnings) and 10 (calculation of earnings of self-employed earners), the earnings of an individual to be taken into account are, in the case of a self-employed earner—

- (a) who is engaged in employment on their own account, the net profit derived from that employment,
 - (b) whose employment is carried on in partnership or is that of a share fisherman, their share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and social security contributions payable under the 1992 Act calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (ii) one half of any premium paid in the period that is relevant under paragraph 10 in respect of a retirement annuity contract or a personal pension scheme,
 - (c) in sub-paragraph (b), “share fisherman” means any person who—
 - (i) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is remunerated in respect of that employment in whole or in part by a share of profits or gross earnings of the fishing boat, or
 - (ii) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Great Britain, otherwise than under a contract of service, performing any services ancillary to or in connection with a fishing boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in that employment.
- (2) There is to be disregarded or deducted as appropriate from an individual’s net profit—
- (a) any sum, where applicable, specified in paragraph 14 (sums to be disregarded in the calculation of earnings), and
 - (b) any care charge to which paragraph 15 (care charges to be deducted in the calculation of earnings) applies up to a maximum deduction, in respect of such care charges incurred by any individual, of 50% of their net profit less those sums, if any, specified in paragraph 14 which are disregarded.

⁽¹⁰¹⁾ 1990 c. 35. Section 2 was amended by section 47 and schedule 10 of the Trade Union Reform and Employment Rights Act 1993 (c. 19) and schedule 26 of the Equality Act 2010 (c. 15) and S.I. 1999/1820.

(3) For the purposes of sub-paragraph (1)(a), the net profit of the employment is, except where sub-paragraph (9) applies, calculated by taking into account the earnings of the employment over the period determined under paragraph 10 (calculation of earnings of self-employed earners), less—

- (a) subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid in that period for the purposes of that employment,
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
- (c) one half of any premium paid in the period that is relevant under paragraph 10 (calculation of earnings of self-employed earners) in respect of a retirement annuity contract or a personal pension.

(4) For the purposes of sub-paragraph (1)(b), the net profit of the employment is calculated by taking into account the earnings of the employment over the period determined under paragraph 10 less, subject to sub-paragraphs (5) to (7), any expenses wholly and exclusively paid in that period for the purposes of that employment.

(5) Subject to paragraph (6), no deduction is to be made under paragraph (3)(a) or (4) in respect of—

- (a) any capital expenditure,
- (b) the depreciation of any capital asset,
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment,
- (d) any loss incurred before the beginning of the period determined under paragraph 10 (calculation of earnings of self-employed earners),
- (e) the repayment of capital on any loan taken out for the purposes of the employment,
- (f) any expenses incurred in providing business entertainment,
- (g) where the individual provides accommodation to another person in the dwelling the individual occupies as their home, any expenses paid by the individual in providing the accommodation to that person.

(6) A deduction is made under sub-paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery, and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) A deduction is not made in respect of any expenses under sub-paragraph (3)(a) or (4) where the Scottish Ministers are not satisfied that the expenses have been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction is not made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business,
- (b) a deduction is made under sub-paragraph (3)(a) or (4) in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under paragraph 10 (calculation of earnings of self-employed earners),

- (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair,
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where an individual is engaged in employment as a child minder the net profit of the employment is one-third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the 1992 Act, calculated in accordance with paragraph 13 (deduction of tax and contributions for self-employed earners), and
 - (b) one half of any premiums paid in respect of a retirement annuity or personal pension scheme.
- (10) Notwithstanding paragraph 10 (calculation of earnings for self-employed earners) and subparagraphs (1) to (5) of this paragraph, the Scottish Ministers may assess any item of an individual's earnings or expenditure over a period other than that determined under paragraph 10 as may, in the particular case, enable the weekly amount of that item of earnings or expenditure to be determined more accurately.

Deduction of tax and contributions for self-employed earners

13.—(1) The amount to be deducted in respect of income tax under paragraph 12(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit for self-employed earners) is calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax less only the personal reliefs to which the individual is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007⁽¹⁰²⁾ and as are appropriate to their circumstances; but, if the period determined under paragraph 10 (calculation of earnings of self-employed earners) is less than a year, the earnings to which the basic rate, or the Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this sub-paragraph is calculated on a pro rata basis.

(2) The amount to be deducted in respect of social security contributions under paragraph 12(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of—

- (a) the amount of Class 2 contributions payable under section 11(2) or, as the case may be, 11(8) of the 1992 Act at the rate applicable at the date on which a decision relating to the individual's entitlement to Carer Support Payment is made by the Scottish Ministers under these Regulations or, as the case may be, on appeal by the First-tier Tribunal for Scotland, except where the individual's chargeable income is equal to or less than the amount specified in section 11(4)(a) of that Act (lower profits threshold) for the tax year in which that date falls; but if the assessment period is less than a year, the amount specified for that year is reduced pro rata, and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the 1992 Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date on which a decision relating to the individual's entitlement to Carer Support Payment is made by the Scottish Ministers under these Regulations or, as the case may be, on appeal by the First-tier Tribunal for Scotland, on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which that date falls; but if the assessment period is less than a year, those limits are reduced pro rata.

⁽¹⁰²⁾2007 c. 3.

- (3) In this paragraph, “chargeable income” means—
- (a) in the case of employment as a child minder, one-third of the earnings of that employment, or
 - (b) in all other cases, the earnings derived from the employment less any expenses deducted under paragraph 12(3)(a) or (4).

Sums to be disregarded in the calculation of earnings and profits

14. For the purposes of paragraphs 9(2) (calculation of net earnings of employed earners) and 12(2) (calculation of net profit of self-employed earners), the sums to be disregarded in the calculation of earnings and profits are—

- (a) any payment made to the individual by a person who normally resides with the individual, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the individual in circumstances to which subparagraph (b) or (c) refers,
- (b) where the individual occupies a dwelling as their home and the dwelling is also occupied by another person and there is a contractual liability to make payments to the individual in respect of the occupation of the dwelling by that person or a member of their family—
 - (i) where the aggregate of any payments made in respect of any one week in respect of that dwelling by that person or a member of their family, or by that person and a member of their family, is less than £20, the whole of that amount, or
 - (ii) where the aggregate of those payments is £20 or more per week, £20,
- (c) where the individual occupies a dwelling as their home and they provide in that dwelling board and lodging accommodation, an amount, in respect of each person for whom that accommodation is provided for the whole or any part of a week, equal to—
 - (i) where the aggregate of those payments made in respect of any one week does not exceed £20, 100% of those payments, or
 - (ii) where the aggregate of those payments exceeds £20, £20 and 50% of the excess over £20,
- (d) except in the case of an individual who is absent from Great Britain and not disqualified for receiving any benefit, pension, allowance or supplement, by virtue of the Social Security Benefit (Persons Abroad) Regulations 1975(103)—
 - (i) any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings,
 - (ii) where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling,
- (e) any earnings which are due to be paid before the start of the award of Carer Support Payment and which would otherwise fall to be taken into account in the same award week as a payment of the same kind and from the same source,
- (f) any payment made by a local authority to the individual with whom a person is accommodated by virtue of arrangements made under section 22C (ways in which looked after children are to be accommodated and maintained) of the Children Act 1989(104) (provision of accommodation and maintenance for a child whom they are looking after), section 81 (ways in which looked after children are to be accommodated and maintained)

(103) S.I. 1975/563.

(104) 1989 c. 41. Section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c. 23).

- of the Social Services and Well-being (Wales) Act 2014(**105**), or section 26 (manner of provision of accommodation to child looked after by local authority) of the Children (Scotland) Act 1995(**106**) or by a voluntary organisation under section 59(1)(a) (provision of accommodation by voluntary organisations) of the Children Act 1989.
- (g) any payment made by a health authority, an integrated care board, the National Health Service Commissioning Board, a local authority or a voluntary organisation to the individual in respect of a person who is not normally a member of the individual's household but is temporarily in their care,
 - (h) any payment paid at intervals of at least one year and derived from employments as—
 - (i) a part-time fire fighter employed by a fire and rescue authority under the Fire and Rescue Services Act 2004(**107**) or by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005(**108**),
 - (ii) an auxiliary coastguard in respect of coast rescue activities,
 - (iii) a person engaged part-time in the manning or launching of a lifeboat,
 - (iv) a member of any territorial reserve force prescribed in Part I of schedule 1 of the Employment and Support Allowance Regulations 2013(**109**),
 - (i) any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under schedule D or E of the Income and Corporation Taxes Act 1988(**110**),
 - (j) in the case of employment as an employed earner, any advance of earnings or any loan made by the individual's employer,
 - (k) any earnings, other than items to which sub-paragraph (l) applies, paid or due to be paid from the individual's employment as an employed earner which ended before the day in respect of which the individual first satisfied the eligibility criteria for Carer Support Payment set out in Part 3 of these Regulations,
 - (l) this sub-paragraph applies to—
 - (i) any payment by way of occupational or personal pension, and
 - (ii) except in a case where the individual's employment terminated by reason of retirement at a time when they had attained pensionable age (within the meaning given by the rules in paragraph 1 of schedule 4 of the Pensions Act 1995(**111**))—
 - (aa) any payment or remuneration of the nature described in paragraph 8(1)(e) or (j), and
 - (bb) any award or sum of the nature described in paragraph 8(1)(g) or (h) (including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings).

Care charges to be deducted in the calculation of earnings

15.—(1) This paragraph applies where an individual is—

(105) 2014 anaw. 4. Section 81 was amended by S.I. 2017/1025.

(106) 1995 c. 36. Section 26 was amended by schedule 3 of the Adoption and Children (Scotland) Act 2007 (asp 4) and schedule 1 of the Children and Young Persons Act 2008 (c. 23).

(107) 2004 c. 21.

(108) 2005 asp 5. Section 1A was inserted by section 101 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

(109) S.I. 2013/379.

(110) 1988 c. 1.

(111) 1995 c. 26. Paragraph 1 of schedule 4 was amended by schedule 2 of the State Pension Credit Act 2002 (c. 16), schedule 3 of the Welfare Reform Act 2007 (c. 5), schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and schedule 12 of the Pensions Act 2014 (c. 19).

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 ISBN 978-0-11-105809-1

- (a) entitled to Carer Support Payment in accordance with these Regulations, and
 - (b) incurring relevant care charges.
- (2) In this paragraph—
- “close relative” means a parent, son, daughter, brother, sister or partner,
 - “relevant care charges” means the charges paid by the individual for care which is provided by a person, who is not a close relative of either the cared for person or the individual, for—
 - (a) the cared for person, or
 - (b) any child under the age of 16 on the date on which the award week begins in respect of whom the individual or their partner is entitled to Child Benefit under section 141 of the 1992 Act because the individual is unable to care for any of those persons because they are carrying out duties in connection with their employment,
 - “cared for person” means the cared for person in respect of whom entitlement to Carer Support Payment arises.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for Carer Support Payment which is a type of carer's assistance given by the Scottish Ministers under section 28 of the Social Security (Scotland) Act 2018.

Part 2 provides an overview of arrangements for payment of Carer Support Payment.

Part 3 sets out the eligibility criteria including the age criteria, requirements for the provision of care to a cared for person, residence and presence conditions, the effect of entitlement to other benefits, criteria for individuals in education and the earnings limit. Schedule 2 provides for calculation of earnings.

Part 4 provides for the making of applications, the time of payments, the amount and form of Carer Support Payment and abatement in respect of a relevant benefit. It also provides for continuing eligibility, temporary stops in entitlement and multiple applications involving the same cared for person. It includes provisions to make payments by way of deduction and when increases and decreases in payments take effect.

Part 5 provides for suspensions.

Part 6 deals with reconsideration of entitlement, where an award of Carer Support Payment has already been made and is being revisited. It provides for determinations without application to be made where a specified period has elapsed, there is a change in circumstances, to address errors resulting in overpayments, official errors resulting in underpayments, or to effect a deduction decision.

Part 7 deals with temporary breaks in care.

Part 8 provides for the situation where people in Scotland in receipt of Carer Support Payment move to another part of the United Kingdom or people in another part of the United Kingdom in receipt of equivalent assistance, Carer's Allowance, move to Scotland.

Part 9 provides for time periods for dealing with requests for re-determination of entitlement.

Part 10 and Part 2 of schedule 1 makes provision to transfer individuals who meet the residence and presence conditions and are awarded Carer's Allowance to become entitled to Carer Support Payment.

Parts 11 and 12 and Part 1 of schedule 1 makes provision for an initial period for applications to take place before full rollout of Carer Support Payment.

Part 13 and Part 3 of schedule 1 make provision for consequential amendments.