

## 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)—

- (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<sup>(1)</sup> 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<sup>(2)</sup> or paragraph 14 (appointees) of Part 3 of the schedule of the Disability Assistance for Children and Young People (Scotland) Regulations 2021<sup>(3)</sup>.

## 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<sup>(4)</sup>, 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

(1) 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.

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

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

(4) 1992 c. 4.

- (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<sup>(5)</sup> 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<sup>(6)</sup>,
    - (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<sup>(7)</sup> 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”.

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<sup>(5)</sup> S.S.I. 2020/475.

<sup>(6)</sup> Section 70 was relevantly amended by S.I. 2002/1457.

<sup>(7)</sup> S.S.I. 2019/324, amended by S.S.I. 2020/99 and S.S.I. 2020/475.