

Draft Order laid before Parliament under section paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
SOCIAL SECURITY**

**The Carer's Assistance (Carer Support Payment) (Scotland)
Regulations 2023 (Consequential Modifications) Order 2023**

Made - - - - 2023

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4), (5) and (7) of the Scotland Act 1998⁽¹⁾.

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) This Order may be cited as the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023.

(2) This Order comes into force on the day after the day on which it is made.

(3) Parts 1 and 6 of this Order extend to England and Wales, Scotland and Northern Ireland.

(4) Part 2 of this Order extends to England and Wales only.

(5) Part 3 of this Order extends to Scotland only.

(6) Part 4 of this Order extends to England and Wales and Scotland.

(7) Part 5 of this Order extends to Northern Ireland only.

(1) 1998 c. 46. There are amendments to sections 104, 112 and 113 which are not relevant to this Order.

PART 2

England and Wales

Amendment of the Social Security Contributions and Benefits Act 1992

2.—(1) The Social Security Contributions and Benefits Act 1992⁽²⁾ is amended as follows.

(2) In section 70 (carer's allowance)⁽³⁾—

(a) for subsection (7), substitute—

“(7) No person shall be entitled for the same day to—

(a) more than one allowance under this section; or

(b) both an allowance under this section and carer support payment.

(7ZA) Where, apart from this subsection, two or more persons would have a relevant entitlement for the same day in respect of the same severely disabled person, one of them only shall have that entitlement and that shall be such one of them—

(a) as they may jointly elect in the prescribed manner; or

(b) as may, in default of such an election, be determined by the Secretary of State in the Secretary of State's discretion.

(7ZB) Subsection (7ZC) applies where a person (A)—

(a) (disregarding the effect of regulation 5(3) of the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023)⁽⁴⁾ has, or would have, an entitlement to carer support payment; or

(b) has, or would have, an entitlement to carer's allowance in respect of which the Scottish Ministers have the power to make decisions,

for a day in respect of a severely disabled person.

(7ZC) Another person (B) shall not have a relevant entitlement for the same day in respect of the same severely disabled person unless—

(a) A and B jointly elect in the prescribed manner that B shall have the relevant entitlement (and that A shall not have an entitlement mentioned in subsection (7ZB)) for that day in respect of that severely disabled person; or

(b) in default of such an election, the Secretary of State is satisfied, following consultation with the Scottish Ministers, that—

(i) the Scottish Ministers have decided, or will decide, that A shall not have an entitlement mentioned in subsection (7ZB); and

(ii) B shall have the relevant entitlement,

for that day in respect of that severely disabled person.”;

(b) in subsection (7A), for “subsection (7)” substitute “subsections (7ZA) and (7ZC)”;

(c) in subsection (7A)(a), after “carer's allowance” insert “in respect of which the Secretary of State has the power to make decisions”;

(d) after subsection (7A), insert—

(2) 1992 c. 4.

(3) Section 70(7) was amended by, and section 70(7A) was inserted by, S.I. 2015/1754; there are other amending instruments but none is relevant.

(4) S.S.I. 2023/XXX.

“(7B) In subsections (7) and (7ZB), “carer support payment” means carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023.”.

PART 3

Scotland

Amendment of the Social Security Contributions and Benefits Act 1992

3.—(1) The Social Security Contributions and Benefits Act 1992⁽⁵⁾ is amended as follows.

(2) In section 70 (carer’s allowance)⁽⁶⁾—

(a) for subsection (7), substitute—

“(7) No person shall be entitled for the same day to—

(a) more than one allowance under this section; or

(b) both an allowance under this section and carer support payment.

(7ZA) Where, apart from this subsection, two or more persons would have an entitlement to carer’s allowance for the same day in respect of the same severely disabled person, one of them only shall have that entitlement and that shall be such one of them—

(a) as they may jointly elect in the prescribed manner; or

(b) as may, in default of such an election, be determined by the Scottish Ministers.

(7ZB) Subsection (7ZC) applies where a person (A)—

(a) (disregarding the effect of regulation 5(3) of the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023) has, or would have, an entitlement to carer support payment; or

(b) has, or would have, an entitlement to carer’s allowance in respect of which the Secretary of State has the power to make decisions,

for a day in respect of a severely disabled person.

(7ZC) Another person (B) shall not have an entitlement to carer’s allowance for the same day in respect of the same severely disabled person unless—

(a) A and B jointly elect in the prescribed manner that B shall have an entitlement to carer’s allowance (and that A shall not have an entitlement mentioned in subsection (7ZB)) for that day in respect of that severely disabled person; or

(b) in default of such an election, the Scottish Ministers are satisfied—

(i) that either—

(aa) A shall not have an entitlement mentioned in subsection (7ZB) (a); or

(bb) the Secretary of State has decided, or will decide, that A shall not have an entitlement mentioned in subsection (7ZB)(b); and

(ii) that B shall have an entitlement to carer’s allowance,

for that day in respect of that severely disabled person.

⁽⁵⁾ 1992 c. 4.

⁽⁶⁾ Section 70(7) was amended by, and section 70(7A) was inserted by, *S.I. 2015/1754*; there are other amending instruments but none is relevant.

(7ZD) Subsection (7ZE) applies where (but for regulation 29 of the Universal Credit Regulations 2013⁽⁷⁾ preventing entitlement by different persons to the carer element and to carer's allowance) a person (A) has, or would have, an entitlement to universal credit carer element for a day in respect of a severely disabled person.

(7ZE) Another person (B) shall not have an entitlement to carer's allowance for the same day in respect of the same severely disabled person unless—

- (a) A and B jointly elect in the prescribed manner that B shall have an entitlement to carer's allowance (and that A shall not have an entitlement to universal credit carer element) for that day in respect of that severely disabled person; or
- (b) in default of such an election, the Scottish Ministers are satisfied that—
 - (i) the Secretary of State has decided, or will decide, that A shall not have an entitlement to universal credit carer element; and
 - (ii) B shall have an entitlement to carer's allowance, for that day in respect of that severely disabled person.”;

(b) for subsection (7A), substitute—

“(7A) For the purposes of subsections (7ZD) and (7ZE), “universal credit carer element” means the inclusion in an award of universal credit of an amount in respect of the fact that the person has regular and substantial caring responsibilities for a severely disabled person under section 12 of the Welfare Reform Act 2012⁽⁸⁾.”;

(c) after subsection (7A), insert—

“(7B) In subsections (7) and (7ZB), “carer support payment” means carer's assistance given in accordance with the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023.”.

PART 4

England and Wales and Scotland

Amendment of the Social Security Contributions and Benefits Act 1992

4.—(1) The Social Security Contributions and Benefits Act 1992 is amended as follows.

(2) In section 150 (interpretation of Part 10)⁽⁹⁾—

(a) after subsection (1)(e), insert—

“(ea) carer support payment;”;

(b) in subsection (2), after the definition of “attendance allowance”, insert—

““carer support payment” means carer's assistance given in accordance with the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023;”.

Amendment of the State Pension Credit Act 2002

5.—(1) The State Pension Credit Act 2002⁽¹⁰⁾ is amended as follows.

(7) S.I. 2013/376.

(8) 2012 c. 5.

(9) Section 150 was amended by S.I. 2002/1457; there are other amending instruments but none is relevant.

(10) 2002 c. 16.

- (2) In section 2(8) (guarantee credit)(**11**)—
- (a) in paragraph (a), after “Contributions and Benefits Act”, insert “or carer support payment”;
 - (b) in paragraph (b), after “an allowance”, insert “or payment”.
- (3) In section 17(1) (other interpretation provisions), after the definition of “capital”, insert—
- ““carer support payment” means carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023;”.

Amendment of the Social Security Act 1998

- 6.**—(1) The Social Security Act 1998(**12**) is amended as follows.
- (2) In Schedule 2 (decisions against which no appeal lies)(**13**)—
- (a) in the heading to paragraph 3, after “carer’s allowance” insert “, carer support payment and the carer element of universal credit”;
 - (b) for paragraph 3 substitute—
- “**3.** A decision as to whether a person has entitlement under section 70(7ZA), (7ZC) or (7ZE) of the Contributions and Benefits Act.”.

Part 5

Northern Ireland

Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act 1992

- 7.**—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992(**14**) is amended as follows.
- (2) In section 70 (carer’s allowance)(**15**), for subsection (7) substitute—
- “(7) No person shall be entitled for the same day to—
- (a) more than one allowance under this section; or
 - (b) both an allowance under this section and carer support payment.
- (7ZA) Where, apart from this subsection, two or more persons would have a relevant entitlement for the same day in respect of the same severely disabled person, one of them only shall have that entitlement and that shall be such one of them—
- (a) as they may jointly elect in the prescribed manner; or
 - (b) as may, in default of such an election, be determined by the Department in its discretion.
- (7ZB) Subsection (7ZC) applies where (disregarding the effect of regulation 5(3) of the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023) a person (A) has an entitlement to carer support payment for a day in respect of a severely disabled person.

(11) Section 2(8)(b) is amended by paragraph 140 of Schedule 24 to the Civil Partnership Act 2004. Section 2(8)(a) and (b) is substituted by section 74(2) of the Welfare Reform Act 2012 (c. 5). Section 74(2) has not been commenced and will come into force on such day as the Secretary of State appoints by statutory instrument made under section 150(3) of the Welfare Reform Act 2012 (c. 5).

(12) 1998 c. 14.

(13) Paragraph 3 of Schedule 2 was amended by S.I. 2002/1457.

(14) 1992 c. 7.

(15) Section 70(7) was amended by, and section 70(7A) was inserted by S.R. 2016 No. 236; there are other amending instruments but none is relevant.

(7ZC) Another person (B) shall not have a relevant entitlement for the same day in respect of the same severely disabled person unless—

- (a) A and B jointly elect in the prescribed manner that B shall have the relevant entitlement (and that A shall not have an entitlement to carer support payment) for that day in respect of that severely disabled person; or
- (b) in default of such an election, the Department is satisfied, following consultation with the Scottish Ministers, that—
 - (i) the Scottish Ministers have decided (under regulation 24 of the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023) that A shall not have an entitlement to carer support payment for that day in respect of that severely disabled person; and
 - (ii) B shall have the relevant entitlement for that day in respect of that severely disabled person.”.

(3) In subsection (7A) of that section, for “subsection (7)” substitute “subsections (7ZA) and (7ZC)”.

(4) After subsection (7A) of that section, insert—

“(7B) In this section, “carer support payment” means carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023.”.

Amendment of the State Pension Credit Act (Northern Ireland) 2002

8.—(1) Section 2 of the State Pension Credit Act (Northern Ireland) 2002(**16**) (guarantee credit) is amended as follows.

(2) In subsection (8)—

- (a) in paragraph (a), after “(invalid care allowance)” insert “or carer support payment”;
- (b) in paragraph (b), after “an allowance” insert “or payment”.

(3) After that subsection insert—

“(8A) In subsection (8), “carer support payment” means carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023.”.

Amendment of the Social Security (Northern Ireland) Order 1998

9.—(1) The Social Security (Northern Ireland) Order 1998(**17**) is amended as follows.

(2) In Schedule 2 (decisions against which no appeal lies)(**18**)—

- (a) in the italic heading before paragraph 3, after “carer’s allowance” insert “, carer support payment and the carer element of universal credit”;
- (b) for paragraph 3 substitute—

“**3.** A decision as to whether a person has a relevant entitlement under section 70(7ZA) or (7ZC) of the Contributions and Benefits Act.”.

(16) 2002 c. 14 (N.I.). Section 2(8)(b) was amended by paragraph 148 of Schedule 24 to the Civil Partnership Act 2004 (c. 33).

(17) S.I. 1998/1506 (N.I. 10).

(18) Paragraph 3 of Schedule 2 was amended by S.R. 2002 No. 321.

PART 6

England and Wales, Scotland and Northern Ireland

Amendment of the Personal Injuries (Civilians) Scheme 1983

10.—(1) The Personal Injuries (Civilians) Scheme 1983(**19**) is amended as follows.

(2) In article 16 (severe disablement occupational allowance)(**20**), after “invalid care allowance,” insert “or carer support payment paid under the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023,”.

Amendment of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006

11.—(1) The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(**21**) is amended as follows.

(2) In article 10(2) (severe disablement occupational allowance)(**22**)—

(a) omit the “or” at the end of sub-paragraph (c);

(b) after sub-paragraph (c) insert—

“(ca) in receipt of carer support payment under the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023; or”.

Amendment of the Childcare Payments Regulations 2015

12.—(1) The Childcare Payments Regulations 2015(**23**) are amended as follows.

(2) In regulation 14 (variation of relevant maximum: delay in payment of allowances)—

(a) omit the “or” at the end of paragraph (1)(a)(i);

(b) after paragraph (1)(a)(i), insert—

“(ia) carer support payment under the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023; or”;

(c) in paragraph (4), after “carer’s allowance,” insert “carer support payment,”.

(3) In regulation 17 (compensatory payments)(**24**)—

(a) omit the “or” at the end of paragraph (2)(b)(i);

(b) after paragraph (2)(b)(i), insert—

“(ia) carer support payment under the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023; or”;

(c) in paragraph (8), after “carer’s allowance,” insert “carer support payment,”.

(19) [S.I. 1983/686](#).

(20) Article 16 was amended by [S.I. 1984/1675](#) and [S.I. 2001/420](#).

(21) [S.I. 2006/606](#).

(22) Article 10(2) was substituted by [S.O. 2008/679](#) and relevantly amended by [S.I. 2013/630](#).

(23) [S.I. 2015/522](#).

(24) Paragraph 8 of regulation 17 was amended by [S.I. 2021/781](#).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023 No. 1214*

	<i>Name</i>
Address	Secretary of State
Date	Office of the Secretary of State for Scotland

EXPLANATORY NOTE

(This note is not part of the Order)

The Carer's Assistance (Carer Support Payment) Regulations 2023 (S.S.I. 2023/XXX) made under section 28 of the Social Security (Scotland) Act 2018 (asp 9) introduce arrangements for the payment of carer's assistance in Scotland in the form of "carer support payment". The carer support payment replaces the carer's allowance for carers residing in Scotland.

This Order makes amendments to social security legislation in the United Kingdom governing entitlement to certain benefits.

Article 2 makes amendments to section 70 of the Social Security Contributions and Benefits Act 1992 (c. 4), as that section extends to England and Wales, so that an individual cannot be entitled to carer's allowance and carer support payment in respect of the same period. The amendments to section 70 also set out a process by which claims for carer's allowance or the carer element of universal credit will be determined when there is another competing claim for carer's allowance, the carer element of universal credit, or, as the case may be, carer support payment.

Article 3 makes equivalent amendments to section 70 of the Social Security Contributions and Benefits Act 1992 in respect of Scotland.

Article 4 amends section 150 of the same Act so that individuals entitled to carer support payment are also entitled to a Christmas bonus.

Article 5 makes consequential amendments to the State Pension Credit Act 2002 (c. 16) so that an additional amount is included in the calculation of an individual's guarantee credit when they are entitled to carer support payment.

Article 6 makes an amendment to the Social Security Act 1998 (c. 14) to ensure that the cross-reference to section 70 of the Social Security Contributions and Benefits Act 1992, in respect of decisions under that section against which no appeal lies, is correct in light of the amendments made by articles 2 and 3 of this Order.

Article 7 makes amendments to section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) which are equivalent to the amendments made by articles 2 and 3, in respect of Northern Ireland.

Article 8 makes consequential amendments to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) so that an additional amount is included in the calculation of an individual's guarantee credit when they are entitled to carer support payment.

Article 9 makes an amendment to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) to ensure that the cross-reference to section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, in respect of decisions under that section against which no appeal lies, is correct in light of the amendments made by article 7 of this Order.

Article 10 makes consequential amendments to the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686) so that an individual cannot receive severe disablement occupational allowance if they are in receipt of carer support payment.

Article 11 makes consequential amendments to the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606) so that an individual cannot receive severe disablement occupational allowance if they are in receipt of carer support payment.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023 No. 1214*

Article 12 makes consequential amendments to Childcare Payments Regulations 2015 ([S.I. 2015/522](#)) so that parents who are awaiting a determination of entitlement to carer support payment may still be eligible for assistance provided under the Childcare Payment Act 2014 ([c. 28](#)).

A full Impact Assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sectors is foreseen.