

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2023 No.**

**SOCIAL SECURITY**

**The Social Security (Up-rating) (Miscellaneous  
Amendments) (Scotland) Regulations 2023**

Made - - - - 2023  
Coming into force in accordance with regulation 1(2),  
(3) and (4)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(1), sections 70(8)(2) and 90(3) of the Social Security Contributions and Benefits Act 1992 and sections 28(2), 30(2), 31(2), 32(2), 34(2) and 95 of the Social Security (Scotland) Act 2018(4), and all other powers enabling them to do so.

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- (1) 1988 c. 7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c. 11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) (“the 1998 Act”) as read with sections 27(2) and 32 of the 2016 Act.
  - (2) 1992 c. 4. The function of making regulations to prescribe the circumstances in which a person is or is not to be treated as gainfully employed, for the purpose of carer’s allowance created under section 70 of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”), transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act as read with sections 22(2) and 32 of the 2016 Act. Section 22(2) of that Act inserted exceptions into the social security reservation in Head F1 of Part 2 of Schedule 5 of the 1998 Act relating to carer’s, disability and industrial injuries benefits. Section 22(2) was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. The transitional arrangements in respect of carer’s benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9) on 3 September 2018 (see S.S.I. 2018/250). The transitional arrangements in respect of carer’s benefits ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under section 70 of the 1992 Act are exercisable within devolved competence, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. The setting of relevant earnings limits falls within that responsibility. Section 122(1) of the 1992 Act contains a definition of the word “prescribed” relevant to the exercise of powers under which these Regulations are made. The requirement to consult the Social Security Advisory Committee under section 172 of the Social Security Administration Act 1992 (c. 5) does not apply to the Scottish Ministers by virtue of section 33 of the Scotland Act 2016 (c. 11).
  - (3) The function of making an increase of carer’s allowance for child dependants under section 90 of the 1992 Act was transferred to the Scottish Ministers in the same way as the section 70 powers and as described in the previous footnote. The same applies to exercising the power in section 175 of the 1992 Act to make regulations setting out earnings limits in relation to entitlement to child dependency increase. An amendment was made to section 175(1) which is not relevant to these Regulations. Section 90 was relevantly amended by paragraph 26 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c. 30) and by article 2 of, and paragraphs 1 and 2 of the schedule of, S.I. 2002/1457. Section 90 was repealed by schedule 6 of the Tax Credits Act 2002 (c. 21) in respect of child dependency increase, subject to savings by article 3 of S.I. 2003/938. Section 90 was repealed for remaining purposes, namely in relation to adult dependency increase, by Part 2 of schedule 7 of the Welfare Reform Act 2009 (c. 24), subject to a saving by section 15(2)(b) of that Act, which saves such increase that relates to the amount of a carer’s allowance payable to a qualifying person at any time on or after 6 April 2010 but before the appropriate date as defined therein.
  - (4) 2018 asp 9. 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). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

In accordance with section 97(2) of the Social Security (Scotland) Act 2018, 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.

In accordance with section 13(2) of the Social Security Act 1988, they have consulted with the Welsh Ministers<sup>(5)</sup>.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018<sup>(6)</sup>, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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(5) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of schedule 11 to that Act.

(6) Section 96(2) was amended by sections 5(8) and 14(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).