
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

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

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(1), 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(2),
- “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(3), 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—

(1) 1995 c. 18.
(2) 2007 c. 5.
(3) 2002 c. 16.

- (a) on the first day of the award week in which the application is treated as made in accordance with paragraph (1),
 - (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(4), or
 - (bb) regulation 38(3)(a) of the Disability Assistance for Working Age People (Scotland) Regulations 2022(5),
 - (ii) a failure to provide information in accordance with—
 - (aa) regulation 17 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(6),
 - (bb) regulation 17 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(7),
 - (cc) regulation 45 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(8), 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(9), 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(10),
 - (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

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

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

(6) 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.

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

(8) S.I. 2013/381.

(9) S.R. 2016/221.

(10) 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).