

POLICY NOTE

THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument will, if approved by the Scottish Parliament, be made 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 2018¹. The instrument is subject to *affirmative procedure*.

Summary Box

This instrument sets out the rules and eligibility criteria for Carer Support Payment, a form of assistance to provide support to people providing regular and substantial care to another individual who normally receives a certain rate of disability assistance. This new form of social security assistance will be administered by Social Security Scotland and will replace Carer's Allowance in Scotland.

This instrument also includes provision to transfer the benefits of individuals who live in Scotland and receive Carer's Allowance (which is currently administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive Carer Support Payment, to be administered by Social Security Scotland on behalf of the Scottish Ministers.

Policy Objectives

Carer Support Payment is intended to improve outcomes for unpaid carers by providing financial assistance to those providing regular and substantial care to someone in receipt of a qualifying disability benefit. Carer Support Payment will be an income-replacement benefit in recognition of the impact of caring on carers' ability to earn income through paid work. It is also intended to provide recognition of the vital caring role being provided, and the wider impact of this on carers, and to help support carers to access opportunities outside of caring.

Carer Support Payment will replace Carer's Allowance which is currently administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers in Scotland. It will be delivered by Social Security Scotland on behalf of Scottish Ministers. Carer Support Payment systems and processes are being designed with carers and support organisations in line with the Scottish Government's aim to ensure carers have a positive experience of the social security system, and to maximise carers' take-up of all support available to them. As part of this, information, notifications and services relating to Carer Support Payment are being designed to increase carers' awareness of the wider carer support and services available.

The regulations include provisions detailing the eligibility criteria, rate of assistance, making of applications and payments for Carer Support Payment. Eligibility criteria for Carer Support Payment set out in these regulations for the initial launch of the benefit will broadly

¹ <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

align with the eligibility criteria for Carer's Allowance. This is to protect the safe and secure transfer of benefits for carers in Scotland who are already receiving Carer's Allowance, until the point that this transfer process is complete. It is also intended to avoid a 'two tier system' during this time in which carers receiving Carer's Allowance and Carer Support Payment would otherwise be treated differently. At the same time, regulations will ensure that Carer Support Payment is delivered in line with the Social Security principles within the framework of the Social Security (Scotland) Act 2018 ('the 2018 Act') and will provide consistency with other benefits delivered by the Scottish Government wherever possible.

In line with the above, Carer Support Payment will be available to people aged 16 or over, who are providing 35 or more hours of care a week to someone in receipt of a qualifying disability benefit. Carers must be earning less than £139 per week from employment or self-employment (after certain deductions) to be eligible for Carer Support Payment. Schedule 2 to the regulations provides for how earnings will be calculated for the purpose of assessing this, which aligns with how earnings are calculated for Carer's Allowance.

Residence and presence conditions

Provisions relating to the residence criteria are included in the draft Regulations in line with the devolved disability benefits – Child and Adult Disability Payments. Regulation 6 sets out the residence and presence criteria that need to be met. This provides for a reduced past presence test compared to that currently in place for Carer's Allowance to allow carers moving into the Common Travel Area to access support sooner. This requires an individual to have been present in the Common Travel Area for 26 of the past 52 weeks in order to receive support. It also sets out circumstances where the test is dis-applied including, but not limited to, where a person is receiving support under the Special Rules for Terminal Illness, has refugee or humanitarian protection status, or is caring for someone who meets these criteria.

Individuals in education

Provisions relating to education are included in the draft Regulations (regulation 13). Education rules for Carer Support Payment will diverge from Carer's Allowance. Carer Support Payment will be available to carers in part-time education at any level in the same way as Carer's Allowance, but in addition to this it will be available to carers aged 20 or over in full-time education at any level, and carers aged 16 to 19 in full-time advanced education. It will not be available to people aged 16 to 19 in full-time non-advanced education. As early as possible as part of the national roll out, which will run from spring to autumn 2024, eligibility for Carer Support Payment will be extended to include carers aged 16 to 19 in non-advanced education in exceptional circumstances set out in the draft Regulations.

Amount of Carer Support Payment

Regulations provide for the rate at which Carer Support Payment will be paid. Carers receiving Carer Support Payment will be entitled to Carer's Allowance Supplement in the same way as carers in Scotland receiving Carer's Allowance. This is provided for through amendments to the 2018 Act which are in Part 3 of schedule 1 to the draft Regulations.

As an income-replacement benefit, it will not be possible for carers to receive Carer Support Payment in full at the same time as another income-replacement benefit. Regulation 16 provides that the amount of Carer Support Payment may be reduced or set to £0 where a carer is receiving another 'overlapping benefit'.

Regulation 17 also provides for a process that replicates the effect of the 'abatement' process used internally within the Department for Work and Pensions (DWP) to offset overpayments

of some income-related legacy benefits that occur as a result of Carer Support Payment being paid.

Regulation 20 is intended to ensure carers are able to access all the support they are entitled to where they make an application for Carer Support Payment which they would be eligible to backdate to a point before the regulations were in force, but would have been unable to apply for Carer's Allowance at that time. This may happen in situations where the benefit of the person they care for is backdated following a Tribunal decision. Regulations provide that the carer's application can be treated as an application for Carer's Allowance and payments can be treated as payments of Carer's Allowance in respect of the period before the regulations came into force.

Suspension of assistance

Provisions relating to suspension of assistance are included in the draft Regulations in line with provisions set out in the 2018 Act. Regulation 29 sets out the specific circumstances in which entitlement can be suspended. Suspension powers are limited in line with the overall approach for devolved benefits, in recognition of concerns around the impact of benefit suspensions on clients. Broadly, payments can be suspended where information has not been provided on time, where a third party is unable to receive payments, or where there is suspected financial abuse. Regulations also set out the considerations that Scottish Ministers must make before suspending assistance to prevent hardship to carers, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs, circumstances in which a suspension should end and the effect of a suspension ending.

Temporary stops in entitlement

Regulation 23 provides for a 'temporary stop in entitlement' to Carer Support Payment in certain circumstances. This is intended to prevent overpayments where a carer ceases to meet the eligibility criteria for Carer Support Payment and it is anticipated that this is a temporary situation, where the carer may become eligible again. This temporary stop will prevent the need for carers to re-apply for support. A temporary stop in entitlement could be applied to any week in which a cared for person's qualifying benefit award is set to £0 or not in payment, or when it is suspended in certain circumstances. A temporary stop could also be applied where a carer has earnings over the earnings limit, or where they have exceeded the allowed amount of breaks in care.

Multiple applications for the same cared for person

Regulation 24 provides for a process for the Scottish Ministers to consider factors outside of the main eligibility criteria for Carer Support Payment, including the best interests of the cared for person, to determine which carer should receive the benefit where more than one carer is eligible for support and there is no agreement between the carers.

Initial period for applications

Regulation 46 provides for an "initial period for applications" for Carer Support Payment, and that individuals must be resident in one of the local authority areas specified in paragraph 2 of Part 1, Schedule 1 of the Regulations in order to be eligible for Carer Support Payment during this initial period. Paragraph 2 of Part 1, Schedule 1 of the regulations, sets out these local authority areas which are Perthshire and Kinross; City of Dundee, and Na h'Eileanan Siar (Western Isles).

Regulation 46 provides that the "initial period for applications" will begin on 19 November 2023 and end on 30 September 2024. This is intended to support the planned roll out

approach for Carer Support Payment. As set out in the regulations, there will be an initial pilot in Dundee City, Perth and Kinross and Na h'Eileanan Siar (Western Isles). Following this, from February 2024, we will begin to transfer the benefits of those already receiving Carer's Allowance so that they will begin receiving Carer Support Payment instead. This will happen across the country and not just in the initial pilot areas.

From spring 2024 we will begin the national roll out of Carer Support Payment. We will take a phased approach to doing this, opening up new applications to the benefit to more areas as soon as this can be done safely and securely. Amending regulations will be brought forward to expand availability of the benefit to additional local authority areas, with Carer Support Payment to be available nationally by autumn 2024.

Once Carer Support Payment is available nationally and case transfer from Carer's Allowance is complete we will then begin to deliver further planned priority improvements, including new extra support for those receiving the benefit and caring for more than one person, and extended support for carers after the loss of the person they care for.

Case Transfer from Carer's Allowance to Carer Support Payment

Part 2, schedule 10 of the Regulations include provision to transfer the awards of individuals who live in Scotland and receive Carer's Allowance (administered by the Department for Work and Pensions), to instead receive Carer Support Payment, to be administered by Social Security Scotland on behalf of Scottish Ministers.

Scottish Ministers have developed a safe and secure process, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

- no individual will be required to re-apply for their benefit;
- individuals will receive clear communications about the case transfer process;
- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

Notice of intent to transfer

When an individual's carer benefit has been selected for transfer, Scottish Ministers will receive data and information relevant to the individual's most recent Carer's Allowance award from the DWP. Once Scottish Ministers have received this information, the regulations make provision for the Scottish Ministers to notify the individual of the intention to transfer their benefits to Carer Support Payment. This notice will set out the process for that transfer.

Determination without application

Scottish Ministers will use the information from the DWP to make a determination without application of the individual's entitlement to Carer Support Payment on a like-for-like basis within a fixed period set out in the notice of intention to transfer. This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The individual will be notified of any extension of the period and the reasons for it.

The determination of the individual's entitlement to Carer Support Payment will also end the corresponding award of Carer's Allowance. A determination of entitlement in respect of Carer Support Payment made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the 2018 Act.

Residence

Scottish Ministers will identify individuals who will transfer from Carer's Allowance to Carer Support Payment using the residential address held by DWP. An individual will be assumed to meet the residence and presence conditions for Carer Support Payment at the point of transfer if they have a Scottish postcode.

If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Carer Support Payment determination and the resulting entitlement. This will also undo the termination of the Carer's Allowance award.

Appointees

All individuals appointed by the DWP in respect of a Carer's Allowance award, who have not already been appointed by Scottish Ministers for the same individual, will be temporarily deemed to act as an appointee for the purposes of Carer Support Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the 2018 Act.

Payment cycles

Paragraph 5(6) of schedule 1, Part 2 provides for a shortened initial week of eligibility for carers whose benefits are transferring from Carer's Allowance, to avoid an overlap in entitlement caused by a misalignment between the Carer's Allowance entitlement week and Carer Support Payment award week.

Additionally, provisions relating to case transfer clients receiving Carer's Allowance on a 3+1 payment cycle (where they are paid one week in advance and three weeks in arrears) are included in the draft Regulations. Paragraph 7 of Part 2 of schedule 1 sets out the specific provisions ensuring people receive the right payments at the right time on case transfer with no gap in support. The regulation set out provisions to move the awards of case transfer clients on a 3+1 payment cycle to a 4 weekly in arrears payment cycle, with the option to request a move to weekly in advance payments.

EU Alignment Consideration

This instrument, and the introduction of Carer Support Payment, is not relevant to the Scottish Government's policy to maintain alignment with the EU. The introduction of Carer Support Payment is also not expected to have any impacts on international trade or investment.

However, it is worth noting that these regulations implement the EU rules on social security co-ordination, which are set out in Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 ("the social security co-ordination rules"). The social security co-ordination rules continue to apply to a limited cohort of individuals in the UK by virtue of the EU-UK Withdrawal Agreement, the EEA EFTA Separation Agreement, the Swiss Citizens' Rights Agreement, and certain international agreements that the UK Government has entered into with Ireland and Gibraltar. Carer's Allowance, which Carer Support Payment is replacing, has been classified as a 'cash sickness benefit' by the EU Administrative Commission which means it can be paid in certain circumstances to UK citizens who are living outside the UK, as well as to certain EU and EEA citizens who are living in the UK.

As Carer Support Payment eligibility and rules will largely mirror Carer's Allowance on launch it is anticipated that it will be classified in the same way, as a 'cash sickness benefit'.

This decision is yet to be made by the EU Administrative Commission and consideration of the benefit is planned for a future session.

In particular, these regulations provide that certain carers who are UK citizens will be able to receive Carer Support Payment while living in the EU or European Economic Area (EEA), Switzerland or Gibraltar, provided the UK is the ‘competent state’ for payment of ‘cash sickness benefits’ to them, and they have a ‘genuine and sufficient link’ to Scotland. Equally, certain carers who are non-UK citizens living in the UK will not be required to meet the past presence test if the UK is the ‘competent state’ for payment of ‘cash sickness benefits’ to that person, and they have a ‘genuine and sufficient link’ to Scotland. Individuals will need to be covered by either the EU-UK Withdrawal Agreement, the EEA EFTA Separation Agreement, the Swiss Citizens’ Rights Agreement, or one of the international agreements that the UK Government has entered into with Ireland or Gibraltar for these rules to apply. To be covered by the EU-UK Withdrawal Agreement, carers from the UK would need to have been living in an EU or EEA member state since before the UK left the EU on the 1st January 2021, and carers from the EU or EEA would have to have been living within the UK since before the UK left the EU on 1st January 2021.

Consultation

Between 28 February 2022 and 25 May 2022, the Scottish Government undertook a public consultation on how the replacement benefit for Carer’s Allowance could work better for carers, from launch, and in future. The consultation received around 200 responses from individuals and stakeholder organisations. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. During the consultation period officials attended Carers Scotland’s Annual Carers Summit and nine engagement events were undertaken to hear from a wide and diverse range of carers. Specific research was also carried out with Social Security Scotland Experience Panels, with 242 members responding to a survey, and 16 follow up interviews. This took place between March and July 2022. Following the consultation period, a series of workshops to take feedback on proposals in light of the consultation responses were held with the Carer Benefits Advisory Group (CBAG)².

An analysis of the responses to the consultation was published on 8 November 2022³. A summary report from the research with experience panel members was published on 9 November 2022⁴. The Scottish Government published a response to the public consultation on 24 March 2023⁵.

Respondents were broadly supportive of the policy proposals, and in general the approach outlined in the consultation paper was perceived to be more sympathetic, flexible, and person-centred. Respondents were supportive of aligning the approach on residence and re-determinations and appeals with the disability benefits, and on the use of ‘nil rating’ (now amended to ‘temporary stops in entitlement’) as a way to prevent overpayments and reduce the need for carers to re-apply for support after temporary breaks in entitlement. The response

² <https://www.gov.scot/groups/carer-benefit-advisory-group/#:~:text=The%20Carer%20Benefits%20Advisory%20Group%20was%20set%20up,on%3A%20the%20evidence%20base%20to%20support%20policy%20decisions>

³ <https://www.gov.scot/publications/scottish-carers-assistance-independent-analysis-responses-consultation/pages/1/>

⁴ <https://www.gov.scot/publications/social-security-experience-panels-scottish-carers-assistance-visual-summary/>

⁵ <https://www.gov.scot/publications/social-security-scottish-carers-assistance-consultation-scottish-government-response/#:~:text=We%20want%20to%20make%20sure,social%20security%20support%20for%20carers.>

to the consultation has informed the development of policy for Carer Support Payment, including the strong support for:

- the proposal to provide an improved service to carers, joining up with wider services to help carers access clear information on the support available to them has guided policy development. There will be a strong focus on providing information and signposting from launch, linking carers to other services at key moments of transition such as the start or end of a caring role, and supporting carers to access opportunities outside of caring, should they wish to do so; and
- the proposal to reduce the education restrictions, with changes brought forward and included in these regulations to allow more carers in full-time education to access Carer Support Payment.

Case transfer

In January and February 2019, two surveys regarding the case transfer process for disability assistance were sent out to Experience Panel members. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019. These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

Additionally, the Scottish Government has been working with relevant stakeholders including the Disability and Carer Benefits Expert Advisory Group (DACBEAG), to develop and receive advice on case transfer principles and the development of the approach to case transfer. The Group's role was to advise Scottish Ministers on specific policy options for disability and carers benefits due to be delivered in Scotland. The Group, which was independent of the Scottish Government, comprised individuals with significant practical experience of the UK social security system from a range of professional backgrounds. Scottish Government officials presented to DACBEAG members on proposed case transfer policy on 3 November 2022, highlighting issues specific to Carer's Allowance case transfer, such as payment cycles, earnings and breaks in care. DACBEAG's advice of 9 December 2022 provided recommendations in relation to payment cycles and earnings, and this advice has been used in developing the policy for these areas.

Scottish Commission on Social Security - scrutiny of the draft Regulations

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on the draft Carer Support Payment Regulations. On 3 March 2023, the Scottish Government provided SCoSS with the draft regulations and an accompanying policy note. Given the complexities of Carer Support Payment the Scottish Government considered it appropriate to request SCoSS' scrutiny of the entirety of the draft Regulations, rather than limiting the request to the specific regulations that fall under section 97 of the 2018 Act. SCoSS published its scrutiny report on 8 June 2023, making thirty-one recommendations and three observations in relation to the draft regulations⁶. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.

⁶ <https://socialsecuritycommission.scot/current-work/the-carers-assistance-carer-support-payment-scotland-regulations-2023/scrutiny-report-the-carers-assistance-carer-support-payment-scotland-regulations-2023/>

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, and Children’s Rights and Wellbeing Impact Assessment have been developed alongside Carer Support Payment policy and are provided with this instrument. Outline assessments were published with the consultation to take feedback from respondents.

Current evidence on existing Carer’s Allowance recipients tells us that 90% of them live in a household with a disabled person, 70% of them are women and 11.5% are from lone parent households. They are also more likely to be in the bottom half of the income distribution. BAME carers are more likely to face financial difficulties and those with intensive caring roles are more likely to live in socially deprived areas.

It is anticipated from the analysis in the impact assessments that the commencement of Carer Support Payment will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children’s rights and improving their wellbeing. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations, however the impact assessments set out the actions the Scottish Government will take in delivering Carer Support Payment to reach the broadest possible range of carers.

A Data Protection Impact Assessment (DPIA) has also been prepared in relation to this instrument.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is provided with this instrument. The Scottish Government does not believe that Carer Support Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The Scottish Government expects that there may be limited impact on the operational business of local authorities or health boards as a result of introducing these regulations.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Carer Support Payment. Current recipients of Carer’s Allowance are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other “fiscal factors”, defined as “anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000”. The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a “non-negligible impact on receipts or expenditure”.

The SFC published an initial forecast for Carer Support Payment on 25 May 2023. This forecast was produced to accompany publication of the Scottish Government’s Medium Term Financial Strategy. This estimated expenditure of £486 million on Carer Support Payment in 2024-25, rising to £546 million in 2025-26. The forecasts for Carer Support Payment include spending on Carer’s Allowance Supplement, and from 2025-26 on the Carer’s Additional

Person Payment, a new payment planned for introduction after case transfer from Carer's Allowance to Carer Support Payment is complete.

The SFC have produced a supplementary forecast to accompany the laying of these regulations. This updates the May forecast following confirmation of the roll out approach for the benefit, in particular the phased roll out. The SFC now estimate that spending on Carer Support Payment will be £477 million in 2024-25, which is £9 million lower than the previous forecast, and £536 million in 2025-26, which is £10 million lower than previous forecast. From 2026-27 the SFC's forecast is unchanged to that published in May 2023, at £585 million.

Scottish Government

Social Security Directorate

October 2023