
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

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

PART 3

Eligibility

Residence and presence conditions

6.—(1) An individual satisfies the residence and presence conditions where on any day that individual—

- (a) is ordinarily resident in Scotland,
- (b) is habitually resident in the common travel area,
- (c) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999⁽¹⁾,
- (d) is present in the common travel area, and
- (e) has been present in the common travel area for a period of, or for periods amounting in the aggregate to, not less than 26 weeks of the 52 weeks immediately preceding that day.

(2) In this Part, “common travel area” has the meaning given in section 1(3) of the Immigration Act 1971⁽²⁾.

(3) The residence condition set out in paragraph (1)(a) does not apply where on any day the individual—

- (a) is habitually resident in Ireland,
- (b) has a genuine and sufficient link to Scotland, and
- (c) is an individual—
 - (i) to whom the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019⁽³⁾, as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for the payment of long term care benefits.

(4) The reference in paragraph (3)(b) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Carer Support Payment, paragraph (3) would be incompatible with the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019.

⁽¹⁾ 1999 c. 33, relevantly amended by S.I. 2020/1309.

⁽²⁾ 1971 c. 77.

⁽³⁾ 2019 CP 49.

(5) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where the person—

- (a) is lawfully working in the United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union⁽⁴⁾ which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,
- (b) is a member of the family of, and living with, a person specified in sub-paragraph (a), or
- (c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.

(6) The past presence condition in paragraph (1)(e) does not apply where an individual—

- (a) has a terminal illness, or
- (b) cares for a cared for person who—
 - (i) has a terminal illness,
 - (ii) is in receipt of Armed Forces Independence Payment or Constant Attendance Allowance at or above the normal maximum rate with Industrial Injuries Disablement Benefit, or at the basic (full day) rate with a War Disablement Pension, or
 - (iii) is not required to meet a past presence condition by virtue of an exception set out in—
 - (aa) regulation 2A(1) or 2C(1) of the Social Security (Attendance Allowance) Regulations 1991⁽⁵⁾,
 - (bb) regulation 2A(1) or 2C(1) of the Social Security (Disability Living Allowance) Regulations 1991⁽⁶⁾,
 - (cc) regulation 2A(1), 2B, 2C(1) or paragraph 5 of Schedule 2 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992⁽⁷⁾,
 - (dd) regulation 22 or 23A(1) of the Social Security (Personal Independence Payment) Regulations 2013⁽⁸⁾,
 - (ee) regulation 5(8), (10)(b), 5(10A) or 8 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽⁹⁾, or
 - (ff) regulation 15(7), 17(2), 18 or 19 of the Disability Assistance for Working Age People (Scotland) Regulations 2022⁽¹⁰⁾.

(7) For the purposes of paragraph (6), an individual or a cared for person has a terminal illness where they are entitled to—

(4) OJ C 202, 7.6.2016, p.146.

(5) S.I. 1991/2740. Regulation 2A was inserted by S.I. 2013/389. Regulation 2C was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(6) S.I. 1991/2890. Regulation 2A was inserted by S.I. 2013/389. Regulation 2C was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(7) S.R. 1992 No. 32. Regulations 2A and 2B were inserted by S.R. 2016 No. 229 and regulation 2B was amended by S.I. 2019/129. Regulation 2C was inserted by S.R. 2017 No. 218 and amended by S.R. 2021 No. 269, S.R. 2022 No. 149, S.R. 2022 No. 230 and S.R. 2023 No. 80.

(8) S.I. 2013/377. Regulation 23A was inserted by S.I. 2017/1015 and amended by S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(9) S.S.I. 2021/174, amended by S.S.I. 2022/41, 2021/416, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

(10) S.S.I. 2022/54, amended by S.S.I. 2022/108, S.S.I. 2022/336 and S.S.I. 2023/149.

- (a) Disability Living Allowance by virtue of regulation 2(4) of the Social Security (Disability Living Allowance) Regulations 1991,
 - (b) Disability Living Allowance by virtue of regulation 2(3) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992,
 - (c) Attendance Allowance by virtue of section 66 of the 1992 Act,
 - (d) Attendance Allowance by virtue of regulation 2(3) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992⁽¹¹⁾,
 - (e) Personal Independence Payment by virtue of regulation 21 of the Social Security (Personal Independence Payment) Regulations 2013,
 - (f) Universal Credit by virtue of regulations 16(2), 28(5)(a) or 40(5) read with paragraph 1 of Schedule 9 of the Universal Credit Regulations 2013⁽¹²⁾,
 - (g) Employment and Support Allowance by virtue of regulations 7(1)(a), 16(1)(a), 31(1)(a), 45(2) or 85(2)(b) of the Employment and Support Allowance Regulations 2013⁽¹³⁾,
 - (h) Personal Independence Payment by virtue of regulation 21 of the Personal Independence Payment Regulations (Northern Ireland) 2016⁽¹⁴⁾,
 - (i) Child Disability Payment by virtue of regulation 15 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,
 - (j) Adult Disability Payment by virtue of regulation 26 of the Disability Assistance for Working Age People (Scotland) Regulations 2022.
- (8) The habitual residence condition in paragraph (1)(b) and the past presence condition in paragraph (1)(e) do not apply where an individual is a person who—
- (a) has leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—
 - (i) the Afghan Relocations and Assistance Policy, or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
 - (b) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (a),
 - (c) has leave granted under the Afghan Citizens Resettlement Scheme,
 - (d) has been granted refugee status or humanitarian protection under the immigration rules,
 - (e) has leave to enter or remain in the United Kingdom as the dependant of a person referred to in sub-paragraph (d),
 - (f) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2⁽¹⁵⁾ of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022, or

⁽¹¹⁾ S.R. 1992 No. 20, amended by S.R. 1997 No. 69, S.R. 2000 No. 71, S.R. 2005 No. 536, S.R. 2006 No. 359, S.R. 2016 No. 229, S.R. 2017 No. 218 and S.I. 2022/335.

⁽¹²⁾ S.I. 2013/376, amended by S.I. 2022/60 and S.I. 2014/597.

⁽¹³⁾ S.I. 2013/379, amended by S.I. 2022/60.

⁽¹⁴⁾ S.R. 2016 No. 217.

⁽¹⁵⁾ 1971 c. 77, amended by section 39 of the British Nationality Act 1981 (c. 61) and S.I. 2019/745.

- (g) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.
- (9) For the purposes of this regulation—
 - (a) “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971⁽¹⁶⁾,
 - (b) “the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021⁽¹⁷⁾.

⁽¹⁶⁾ 1971 c. 77.

⁽¹⁷⁾ Published at <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>.