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STATUTORY INSTRUMENTS

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**2023 No. 1214**

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

**PART 3**

**Scotland**

**Amendment of the Social Security Contributions and Benefits Act 1992**

**3.—**(1) The Social Security Contributions and Benefits Act 1992<sup>(1)</sup> is amended as follows.

(2) In section 70 (carer's allowance)<sup>(2)</sup>—

(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—

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<sup>(1)</sup> 1992 c. 4.

<sup>(2)</sup> 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.

(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.

(7ZD) Subsection (7ZE) applies where (but for regulation 29 of the Universal Credit Regulations 2013<sup>(3)</sup> 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<sup>(4)</sup>.”;

(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.”.

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<sup>(3)</sup> S.I. 2013/376.

<sup>(4)</sup> 2012 c. 5.