

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

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⁽⁵⁾.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023.

(2) Subject to paragraphs (3) and (4), these Regulations come into force on 1 April 2023.

(3) Regulation 4 comes into force on 3 April 2023.

(4) Regulations 2, 3, 6, 7 and 9 come into force on 10 April 2023.

(5) In these Regulations—

“the Adult Disability Payment Regulations” means the Disability Assistance for Working Age People (Scotland) Regulations 2022⁽⁷⁾,

“the Adult Disability Payment Transitional Regulations” means the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022⁽⁸⁾,

“the Best Start Foods Regulations” means the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019⁽⁹⁾,

“the Best Start Grants Regulations” means the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018⁽¹⁰⁾,

“the Carer’s Allowance Regulations” means the Social Security (Invalid Care Allowance) Regulations 1976⁽¹¹⁾,

“the Child Disability Payment Regulations” means the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽¹²⁾,

“the Child Winter Heating Assistance Regulations” means the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020⁽¹³⁾,

“the Dependency Regulations” means the Social Security Benefit (Dependency) Regulations 1977⁽¹⁴⁾,

(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).

(7) S.S.I. 2022/54; relevantly amended by S.S.I. 2022/129.

(8) S.S.I. 2022/217.

(9) S.S.I. 2019/193; relevant amending instruments are S.S.I. 2021/221, S.S.I. 2022/129, S.S.I. 2022/167 and S.S.I. 2022/336.

(10) S.S.I. 2018/370; relevant amending instruments are S.S.I. 2019/157 and S.S.I. 2022/129.

(11) S.I. 1976/409; relevant amending instruments are S.I. 1996/2744, S.I. 2002/2497 and S.S.I. 2022/28.

(12) S.S.I. 2021/174; relevant amending instruments are S.S.I. 2022/41 and S.S.I. 2022/129.

(13) S.S.I. 2020/352; relevant amending instruments are S.S.I. 2021/415 and S.S.I. 2022/129.

(14) S.I. 1977/343; relevant amending instruments are S.I. 1984/1699, S.S.I. 2021/170 and S.S.I. 2022/28.

“the Winter Heating Payment Regulations” means the Winter Heating Assistance (Low Income) (Scotland) Regulations 2023(15),

“the Funeral Support Payment Regulations” means the Funeral Expense Assistance (Scotland) Regulations 2019(16), and

“the Young Carer Grants Regulations” means the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019(17).

Amendment of the Adult Disability Payment Regulations

2.—(1) The Adult Disability Payment Regulations are amended as follows.

(2) In regulation 34(18) (amount and form of Adult Disability Payment)—

- (a) in paragraph (1)(a), for “£61.85” substitute “£68.10”,
- (b) in paragraph (1)(b), for “£92.40” substitute “£101.75”,
- (c) in paragraph (2)(a), for “£24.45” substitute “£26.90”,
- (d) in paragraph (2)(b), for “£64.50” substitute “£71.00”.

Amendment to the Adult Disability Payment Transitional Regulations

3.—(1) The Adult Disability Payment Transitional Regulations are amended as follows.

(2) In regulation 6(1) (amount and form and time of payment of Adult Disability Payment), for “£24.45” substitute “£26.90”.

Amendment of the Best Start Foods Regulations

4.—(1) The Best Start Foods Regulations are amended as follows.

(2) In regulation 10(1)(19) (kinds of assistance)—

- (a) in sub-paragraph (a), for “£17,005” substitute “£18,725”,
- (b) in sub-paragraph (b)(i), for “£7,920” substitute “£8,717”,
- (c) in sub-paragraph (c), for “£328” substitute “£358”,
- (d) in sub-paragraph (h), in both places where it occurs for “£660” substitute “£726”.

(3) In regulation 13(20) (value of benefit)—

- (a) in paragraph (1), for “£4.50” substitute “£4.95”,
- (b) in paragraph (2)(a), for “£9.00” substitute “£9.90”,
- (c) in paragraph (2)(b), for “£4.50” substitute “£4.95”,
- (d) in paragraph (3), for “£9.00” substitute “£9.90”.

Amendment of the Best Start Grants Regulations

5.—(1) The Best Start Grants Regulations are amended as follows.

(2) In schedule 2—

(15) S.S.I. 2023/16.

(16) S.S.I. 2019/292; relevant amending instruments are S.S.I. 2020/99 and S.S.I. 2022/129.

(17) S.S.I. 2019/324; relevant amending instruments are S.S.I. 2020/475 and S.S.I. 2022/129.

(18) Regulation 34 is amended by S.S.I. 2022/129.

(19) Regulation 10 is relevantly amended by S.S.I. 2022/129 and S.S.I. 2022/336.

(20) Regulation 13 is relevantly amended by S.S.I. 2021/221 and S.S.I. 2022/167.

- (a) in paragraph 6(1)(21) (basic amount of pregnancy and baby grant)—
 - (i) in head (a), for “£642.35” substitute “£707.25”,
 - (ii) in head (b), for “£321.20” substitute “£353.65”,
- (b) in paragraph 7(1)(22) (multiple pregnancy supplement), for “£321.20” substitute “£353.65”.
- (3) In paragraph 4 of schedule 3(23) (value of early learning grant), for “£267.65” substitute “£294.70”.
- (4) In paragraph 5 of schedule 4(24) (value of school-age grant), for “£267.65” substitute “£294.70”.

Amendment of the Carer’s Allowance Regulations

- 6.—(1) The Carer’s Allowance Regulations are amended as follows.
- (2) In regulation 8(1)(25) (circumstances in which a person is or is not to be treated as gainfully employed) for “£132”, in both places where it occurs, substitute “£139”.

Amendment of the Child Disability Payment Regulations

- 7.—(1) The Child Disability Payment Regulations are amended as follows.
- (2) In regulation 23(26) (amount and form of Child Disability Payment)—
 - (a) in paragraph (1)(a), for “£92.40” substitute “£101.75”,
 - (b) in paragraph (1)(b), for “£61.85” substitute “£68.10”,
 - (c) in paragraph (1)(c), for “£24.45” substitute “£26.90”,
 - (d) in paragraph (2)(a), for “£64.50” substitute “£71.00”,
 - (e) in paragraph (2)(b), for “£24.45” substitute “£26.90”.

Amendment of the Child Winter Heating Assistance Regulations

- 8.—(1) The Child Winter Heating Assistance Regulations are amended as follows.
- (2) In regulation 10(1)(27) (value of child winter heating assistance), for “£214.10” substitute “£235.70”.

Amendment of the Dependency Regulations

- 9.—(1) The Dependency Regulations are amended as follows.
- (2) In paragraph 2B of schedule 2(28) (increase of carer’s allowance for child dependants – earnings limits)—
 - (a) for “£255”, in both places where it occurs, substitute “£280”,
 - (b) for “£34” substitute “£37”.

(21) Paragraph 6 of schedule 2 is relevantly amended by S.S.I. 2022/129.

(22) Paragraph 7 of schedule 2 is relevantly amended by S.S.I. 2022/129.

(23) Paragraph 4 of schedule 3 was inserted by S.S.I. 2019/157 and is relevantly amended by S.S.I. 2022/129.

(24) Paragraph 5 of schedule 4 was inserted by S.S.I. 2019/157 and is relevantly amended by S.S.I. 2022/129.

(25) Regulation 8 is relevantly amended by S.I. 1996/2744, S.I. 2002/2497 and S.S.I. 2022/28.

(26) Regulation 23 is amended by S.S.I. 2022/41 and S.S.I. 2022/129.

(27) Regulation 10 is relevantly amended by S.S.I. 2021/415 and S.S.I. 2022/129.

(28) Paragraph 2B of schedule 2 was inserted by S.I. 1984/1699 and is relevantly amended by S.S.I. 2021/170 and S.S.I. 2022/28.

Amendment of the Funeral Support Payment Regulations

10.—(1) The Funeral Support Payment Regulations are amended as follows.

(2) In regulation 13(**29**) (amount of funeral expense assistance)—

- (a) in paragraph (1)(b), for “£1,070.60” substitute “£1,178.75”,
- (b) in paragraph (4)(b), for “£21.55” substitute “£23.75”,
- (c) in paragraph (6), for “£130.65” substitute “£143.85”.

Amendment of the Winter Heating Payment Regulations

11.—(1) The Winter Heating Payment Regulations are amended as follows.

(2) In regulation 9(1) (value and form of winter heating payment), for “£50” substitute “£55.05”.

Amendment of the Young Carer Grants Regulations

12.—(1) The Young Carer Grants Regulations are amended as follows.

(2) In regulation 12(1)(**30**) (amount and form of young carer grants), for “£326.65” substitute “£359.65”.

Saving provisions

13. The schedule has effect.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(29) Regulation 13 is relevantly amended by S.S.I. 2020/99 and S.S.I. 2022/129.

(30) Regulation 12 is relevantly amended by S.S.I. 2020/475 and S.S.I. 2022/129.

SCHEDULE

Regulation 13

Saving Provisions

Adult Disability Payment Regulations

1.—(1) This paragraph applies where an individual's determination of entitlement includes an award for the period on or after 11 April 2022 and before 10 April 2023.

(2) Despite regulation 2, regulation 34 of the Adult Disability Payment Regulations continues to have effect on and after 10 April 2023 as it did immediately before that date in respect of the period mentioned in sub-paragraph (1).

Adult Disability Payment Transitional Regulations

2.—(1) This paragraph applies where an individual's determination of entitlement includes an award for the period on or after 11 April 2022 and before 10 April 2023.

(2) Despite regulation 3, regulation 6 of the Adult Disability Payment Transitional Regulations continues to have effect on and after 10 April 2023 as it did immediately before that date in respect of the period mentioned in sub-paragraph (1).

Best Start Foods Regulations

3.—(1) This paragraph applies where an individual's entitlement to benefit includes an award for the period on or after 1 April 2022 and before 3 April 2023.

(2) Despite regulation 4, regulation 10 of the Best Start Foods Regulations continues to have effect on and after 3 April 2023 as it did immediately before that date in respect of the period mentioned in sub-paragraph (1).

4.—(1) This paragraph applies where an individual's entitlement to benefit includes an award for the period on or after 2 July 2022 and before 3 April 2023.

(2) Despite regulation 4, regulation 13 of the Best Start Foods Regulations continues to have effect on and after 3 April 2023 as it did immediately before that date in respect of the period mentioned in sub-paragraph (1).

Best Start Grants Regulations

5.—(1) This paragraph applies where an individual's application for assistance was made on or after 1 April 2022 and before 1 April 2023.

(2) Despite regulation 5, paragraphs 6 and 7 of schedule 2, paragraph 4 of schedule 3 and paragraph 5 of schedule 4 of the Best Start Grants Regulations continue to have effect on and after 1 April 2023 as they did immediately before that date for the purpose of determining the amount of assistance to which the individual is entitled.

Child Disability Payment Regulations

6.—(1) This paragraph applies where an individual's determination of entitlement includes an award for the period on or after 11 April 2022 and before 10 April 2023.

(2) Despite regulation 7, regulation 23 of the Child Disability Payment Regulations continues to have effect on and after 10 April 2023 as it did immediately before that date in respect of the period mentioned in sub-paragraph (1).

Child Winter Heating Assistance Regulations

7.—(1) This paragraph applies where an individual is entitled to be paid child winter heating assistance in respect of a qualifying week occurring on or after 1 April 2022 and before 1 April 2023.

(2) Despite regulation 8, regulation 10 of the Child Winter Heating Assistance Regulations continues to have effect on and after 1 April 2023 as it did immediately before that date for the purpose of determining the amount of assistance to which the individual is entitled in respect of the qualifying week mentioned in sub-paragraph (1).

(3) In this paragraph, “child winter heating assistance” and “qualifying week” have the meanings given in regulation 2 of the Child Winter Heating Assistance Regulations.

Funeral Support Payment Regulations

8.—(1) This paragraph applies where an individual’s application for assistance was made on or after 1 April 2022 and before 1 April 2023.

(2) Despite regulation 10, regulation 13 of the Funeral Support Payment Regulations continues to have effect on and after 1 April 2023 as it did immediately before that date for the purpose of determining the amount of assistance to which the individual is entitled.

Winter Heating Payment Regulations

9.—(1) This paragraph applies where an individual is entitled to be paid winter heating payment in respect of a qualifying week occurring on or after 25 January 2023 and before 1 April 2023.

(2) Despite regulation 11, regulation 9 of the Winter Heating Payment Regulations continues to have effect on and after 1 April 2023 as it did immediately before that date for the purpose of determining the amount of assistance to which the individual is entitled in respect of the qualifying week mentioned in sub-paragraph (1).

(3) In this paragraph, “winter heating payment” and “qualifying week” have the meanings given in regulation 2 of the Winter Heating Payment Regulations.

Young Carer Grants Regulations

10.—(1) This paragraph applies where an individual’s application for assistance was made on or after 1 April 2022 and before 1 April 2023.

(2) Despite regulation 12, regulation 12 of the Young Carer Grants Regulations continues to have effect on and after 1 April 2023 as it did immediately before that date for the purpose of determining the amount of assistance to which the individual is entitled.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for an increase in various values of forms of assistance payable by virtue of regulations made under the Social Security (Scotland) Act 2018 and make amendments to the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security Benefit (Dependency) Regulations 1977 and the Welfare Foods (Best Start Foods) (Scotland) Regulations

2019. The Regulations come into force on 1 April 2023, with the exception of regulations 2, 3, 6, 7 and 9, which come into force on 10 April 2022 and regulation 4 which comes into force on 3 April 2023.

Regulation 2 increases the value of Adult Disability Payment payable under the Disability Assistance for Working Age People (Scotland) Regulations 2022. Paragraph 1 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 3 increases the value of a transitional rate of Adult Disability Payment payable under the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022. Paragraph 2 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 4 increases the income thresholds in the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. This regulation also increases the amounts of the various values at which Best Start Food benefits are paid.

Regulation 5 increases the value of the three grants payable under the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (the pregnancy and baby grant, the early learning grant, and the school-age grant). Paragraph 4 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 6 amends regulation 8 of the Social Security (Invalid Care Allowance) Regulations 1976 (“the 1976 Regulations”) which increases the amount which a person eligible for payment of carer’s allowance from the Scottish Ministers can earn in a given week without being deemed to be gainfully employed and, therefore, losing their entitlement to carer’s allowance. The Social Security Amendment (Carer’s Allowance) Regulations 2002 ([S.I. 2002/2497](#)) replaces references to “Invalid Care Allowance” with references to “Carer’s Allowance” in certain legislative provisions, but “Invalid Care Allowance” remains part of the title of the 1976 Regulations for statutory purposes.

Regulation 7 increases the value of Child Disability Payment payable under the Disability Assistance for Children and Young People (Scotland) Regulations 2021. Paragraph 5 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 8 increases the amount of child winter heating assistance payable under the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020. Paragraph 6 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 9 amends schedule 2 of the Social Security Benefit (Dependency) Regulations 1977. The effect is to increase the amount which the partner of a person eligible for payment of carer’s allowance from the Scottish Ministers can earn in a given week without the person receiving carer’s allowance losing any entitlement to what is payable by way of an additional payment where a recipient is entitled to receive child benefit in relation to a child or children. This addition is known as “child dependency increase” and is payable only to those with transitional protection. Child dependency increase was abolished by section 1(3)(e) and schedule 6 of the Tax Credits Act 2002 ([c. 21](#)) but saved for transitional cases by article 3 of the Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 ([S.I. 2003/938](#)).

Regulation 10 increases the amounts of funeral expense assistance payable under the Funeral Expense Assistance (Scotland) Regulations 2019. Paragraph 7 of the schedule makes saving provision so that the previous values of this assistance are still payable in certain circumstances.

Regulation 11 increases the amount of winter heating payment payable under the Winter Heating Assistance (Low Income) (Scotland) Regulations 2023. Paragraph 8 of the schedule makes saving provision so that the previous value of this assistance is still payable in certain circumstances.

Regulation 12 increases the value of Young Carer Grant payable under the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019. Paragraph 9 of the schedule makes saving provision so that the previous value of this grant is still payable in certain circumstances.

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2023 No. 111*