

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

2024 No.

SOCIAL SECURITY

**The Carer's Assistance (Carer Support Payment)
(Scotland) Amendment Regulations 2024**

Made - - - - 2024
Coming into force - - 23rd June 2024

The Scottish Ministers make the following regulations in exercise of the powers conferred by sections 28(2) and 95 of the Social Security (Scotland) Act 2018(1), and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, 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.

Citation and commencement

1.—(1) These Regulations may be cited as the Carer's Assistance (Carer Support Payment) (Scotland) Amendment Regulations 2024.

(2) These Regulations come into force on 23 June 2024.

Amendment of the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

2.—(1) The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023(2) are amended in accordance with paragraphs (2) to (14).

(2) In regulation 1(3) (citation and commencement), for "1 October 2024", substitute "23 June 2024".

(3) For regulation 5(6) (provision of care to a cared for person), substitute—

(1) 2018 asp 9 ("the 2018 Act"). Schedule 2 makes provision about the exercise of powers under section 28. 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) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) S.S.I. 2023/302, to which there are amendments not relevant to these Regulations.

“(6) A period during which an individual fails to satisfy the requirement of paragraph (2) is to be treated as a temporary break in care within the meaning of regulation 40 (temporary break in care), provided the individual satisfies the requirements set out in regulation 40.”.

(4) After regulation 18 (when an application is treated as made and beginning of entitlement to assistance), insert—

“Entitlement beginning before individual satisfied the residence requirements in regulation 46

18A.—(1) This paragraph applies where an individual—

- (a) is undertaking—
 - (i) a course of full-time advanced education,
 - (ii) a course of full-time education which is provided by virtue of their employment or any office held by them, or
 - (iii) a course of full-time education and has reached the age of 20,
- (b) is exempt from fulfilling the past presence test in regulation 6(1)(e) (residence and presence) by virtue of an exception mentioned in regulation 6(6), or
- (c) would not satisfy the past presence test in regulation 9(1)(c) (residence and presence in Great Britain) of the Social Security (Invalid Care Allowance) Regulations 1976⁽³⁾ at any point between 19 November 2023 and the date on which they first satisfied the eligibility criteria prescribed in these regulations (including those prescribed in regulation 46 (transitory provision - initial period for applications), insofar as it applies).

(2) Where, on the basis of an application, a determination is made that an individual to whom paragraph (1) applies is entitled to Carer Support Payment, entitlement to assistance is to begin—

- (a) on the first day of the award week in which the application is treated as made in accordance with regulation 18(1) (when an application is to be treated as made and beginning of entitlement to assistance), or
- (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 earlier than 19 November 2023,
 - (ii) the individual’s application is received by the Scottish Ministers—
 - (aa) on or before the relevant date, or
 - (bb) after the relevant date, provided the Scottish Ministers consider that the individual has good reason for not making their application on or before the relevant date, and
 - (iii) the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that chosen date.

(3) For the purposes of this regulation—

“advanced education” has the same meaning as in regulation 13(4),

“full-time education” has the same meaning as in regulation 13(4),

“the relevant date” means the date specified paragraph 2A of schedule 1.

(3) S.I. 1976/409.

Entitlement beginning before individual satisfied the residence requirements in regulation 46 – individuals in education mentioned in regulation 13(2)

18B.—(1) This paragraph applies to any individual—

- (i) who has not reached the age of 20, and
- (ii) to whom regulation 13(2) (individuals in education) applies.

(2) Where, on the basis of an application, a determination is made that an individual to whom paragraph (1) applies is entitled to Carer Support Payment, entitlement to assistance is to begin—

- (a) on the first day of the award week in which the application is treated as made in accordance with regulation 18(1) (when an application is to be treated as made and beginning of entitlement to assistance), or
- (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 earlier than 23 June 2024,
 - (ii) the individual's application is received by the Scottish Ministers—
 - (aa) on or before the relevant date, or
 - (bb) after the relevant date, provided the Scottish Ministers consider that the individual has good reason for not making their application on or before the relevant date, and
 - (iii) the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that chosen date.

(3) For the purposes of this regulation—

- “advanced education” has the same meaning as in regulation 13(4),
- “full-time education” has the same meaning as in regulation 13(4),
- “the relevant date” means the date specified in paragraph 2B of schedule 1.”.

(5) For regulation 27(1)(b) (when a decrease in amount or cessation of entitlement takes effect), substitute—

- “(b) in the case of an earlier determination which was based on error within the meaning of regulation 37 (determination following official error – underpayments) or regulation 38 (determination following error – overpayments), on the first day of the award week in which the earlier determination took effect.”.

(6) For regulation 28(1)(b) (when an increase in amount of entitlement takes effect), substitute—

- “(b) in the case of an earlier determination which was based on error within the meaning of regulation 37 (determination following official error – underpayments) or regulation 38 (determination following error – overpayments), on the first day of the award week in which the earlier determination took effect.”.

(7) In regulation 40 (temporary break in care), after paragraph (2) insert—

- “(3) Paragraph (1) applies to an individual who fails to satisfy the requirement of regulation 5(2) because they are in legal detention, provided the individual satisfies the requirements of this regulation.”.

(8) In regulation 46 (transitory provision – initial period for applications)—

- (a) in paragraph (2), for “30 September 2024” substitute “3 November 2024”, and
- (b) after paragraph (2) insert—

- “(3) The initial period for applications comprises three phases—
- (a) phase 1, beginning with 19 November 2023 and ending with 23 June 2024,
 - (b) phase 2, beginning with 24 June 2024 and ending with 18 August 2024, and
 - (c) phase 3, beginning with 19 August 2024 and ending with 3 November 2024.”.

(9) In paragraph 2 of schedule 1 (local authority areas for initial period for applications)—

 - (a) for sub-paragraph (a), substitute—
 - “(a) in phase 1, Perthshire and Kinross, City of Dundee and Western Isles,”,
 - (b) for sub-paragraph (b), substitute—
 - “(b) in phase 2, Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire and South Lanarkshire,”,
 - (c) for sub-paragraph (c), substitute—
 - “(c) in phase 3, Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire, South Lanarkshire, Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire and South Ayrshire.”.

(10) After Part 1 of schedule 1, insert—

“PART 1A

Relevant date

2A. For the purposes of regulation 18A (entitlement beginning before individual satisfied residence requirements), the “relevant date” in respect of an individual who is resident in a local authority area listed in column 1 of table 1, is the date specified in the corresponding entry of column 2.

Table 1

<i>Column 1: local authority area</i>	<i>Column 2: relevant date</i>
Angus, North Lanarkshire or South Lanarkshire,	22 September 2024
Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire or South Ayrshire,	17 November 2024
Argyll and Bute, Clackmannanshire, Dumfries and Galloway, East Dunbartonshire, East Lothian, East Renfrewshire, City of Edinburgh, Falkirk, Glasgow City, Highlands, Inverclyde, Midlothian, Orkney Islands, Renfrewshire, Scottish Borders, Shetland Islands, Stirling, West Dunbartonshire or West Lothian	2 February 2025

2B. For the purposes of regulation 18B (entitlement beginning before individual satisfied residence requirements – education), the “relevant date” in respect of an individual who is resident in a local authority area listed in column 1 of table 2, is the date specified in the corresponding entry of column 2.

Table 2

<i>Column 1: local authority area</i>	<i>Column 2: relevant date</i>
Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire or South Lanarkshire	22 September 2024
Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire or South Ayrshire	17 November 2024
Argyll and Bute, Clackmannanshire, Dumfries and Galloway, East Dunbartonshire, East Lothian, East Renfrewshire, City of Edinburgh, Falkirk, Glasgow City, Highlands, Inverclyde, Midlothian, Orkney Islands, Renfrewshire, Scottish Borders, Shetland Islands, Stirling, West Dunbartonshire or West Lothian	2 February 2025”.

(11) In paragraph 5(2)(b) of schedule 2 (calculation of earnings of employed earners), for the formula, substitute—

$$\text{“ } \frac{P}{Q + R} \text{ ”}$$

(12) In paragraph 10(2) of schedule 2 (calculation of earnings of self-employed earners), for the formula, substitute—

$$\text{“ } \frac{S}{T + U} \text{ ”}$$

(13) In paragraph 13(2) of schedule 2 (deduction of tax and contributions for self-employed earners) in heads (a) and (b), for “decision”, substitute “determination”.

(14) In paragraph 14 of schedule 2 (sums to be disregarded in the calculation of earnings and profits)—

(a) for sub-paragraph (d), substitute—

“(d) except in the case of an individual who is absent from the United Kingdom and to whom regulation 11 (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies—

(i) any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against transfer to the United Kingdom of those earnings,

(ii) where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.”,

(b) in sub-paragraph (g), for “the National Health Service Commissioning Board”, substitute “NHS England”.

Amendment of the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023

3.—(1) Regulation 9 (transitional provision – extinguishment of right to apply for Carer's Allowance) of the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023⁽⁴⁾ is amended in accordance with paragraphs (2) and (3).

(2) In paragraph (1), for sub-paragraph (a), substitute—

“(a) during the initial period for applications for carer support payment—

- (i) in phase 1 is resident in the local authority area of Perthshire and Kinross, City of Dundee or Western Isles,
- (ii) in phase 2 is resident in the local authority area of Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire or South Lanarkshire,
- (iii) in phase 3 is resident in the local authority area of Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire, South Lanarkshire, Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire or South Ayrshire, or”.

(3) In paragraph (2), in the definition of “initial period for applications” for “30 September 2024”, substitute “3 November 2024, and references to phases of that period are to be construed in accordance with regulation 46(3) of those Regulations”.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

(4) S.S.I. 2023/258.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 ('the principal Regulations').

Regulation 2(2) amends regulation 1 (citation and commencement) of the principal Regulations so that certain exceptions to the full-time education restriction in regulation 13 of the principal Regulations are introduced on 23 June 2024 rather than 1 October 2024.

Regulation 2(3) clarifies that an individual will be treated as satisfying the caring requirement set out in regulation 5(2) (provision of care to a cared for person) for any period during which they are on a temporary break in care, within the meaning of regulation 40 (temporary break in care).

Regulation 2(4) inserts two new provisions into the principal Regulations (regulations 18A (entitlement beginning before individual satisfied the residence requirements in regulation 46) and 18B (entitlement beginning before individual satisfied the residence requirements in regulation 46 - individuals in education mentioned in regulation 13(2)) which provide that certain individuals who are entitled to Carer Support Payment, but who would not have been entitled to Carer's Allowance, can have their entitlement backdated to the date that Carer Support Payment first became available, provided they were eligible at that time. These provisions include an application window, so that individuals will have a period of 13 weeks from the date that applications open in their local authority area in which they can apply for this extended backdating.

Regulation 2(5) and (6) amend the effective date provisions for determinations without application where there has been an official error or error, as set out in regulation 27 (when a decrease in amount or cessation of entitlement takes effect) and regulation 28 (when an increase in amount of entitlement takes effect), respectively of the principal Regulations.

Regulation 2(7) amends regulations 40 (temporary break in care), clarifying the effect of legal detention on the requirement to provide care to a cared for person, set out in regulation 5(2).

Regulation 2(8) and (9) amend regulation 46 (transitory provision – initial period for applications) of the principal Regulations to provide that the initial period for applications comprises 3 phases, with Carer Support Payment becoming available in additional local authority areas at each phase. These amendments also provide that Carer Support Payment will be available nationally across Scotland from 21 October 2024.

Regulation 2(10) inserts two tables into Part 1 of schedule 1 (initial period for applications) of the principal Regulations to provide the relevant dates for the application windows that apply to individuals in different local authority areas.

Regulation 2(11), (12), (13) and (14) make amendments to the schedule 2 (calculation of earnings) of the principal Regulations.

Regulation 3 makes amendments to the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 to provide that no individual who is able to apply for Carer Support Payment due to being resident in Scotland, or otherwise meeting the residence and presence conditions in the principal Regulations, may apply for Carer's Allowance.