

POLICY NOTE

THE CARER'S ALLOWANCE (CORONAVIRUS) (BREAKS IN CARE) (SCOTLAND) REGULATIONS 2020

SSI 2020/117

The above instrument was made in exercise of the powers conferred by section 70(8) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992. The instrument is subject to negative procedure.

Purpose of the instrument

These regulations temporarily suspend the rule that carers can take only four weeks of breaks in caring within a six-month period and continue to receive Carer's Allowance, in cases where carers are unable to provide the required 35 hours of care because they, or the cared-for person, are ill or self-isolating as a result of coronavirus.

Policy Objectives

To be eligible for Carer's Allowance in a given week, a carer must be, or be likely to be, regularly and substantially engaged in caring for a severely disabled person. Engagement is to be considered 'regular and substantial' where the care is provided for at least 35 hours in any given week. In any 26-week period, a carer may have up to four weeks' 'break' where they do not provide this level of care but are treated as if they have for the purpose of being entitled to the allowance.

The policy objective is for periods of time where a carer does not provide 35 hours of care per week to be treated as weeks in which the requirement of regular and substantial engagement is met, in certain circumstances where absence of care is caused by coronavirus. The circumstances are where a carer is prevented from caring because they, or the person cared for, are ill as a result of coronavirus, or are isolating themselves, in line with government guidance, to prevent infection or contamination with coronavirus. As a result, such periods will have no effect on entitlement to Carer's Allowance, and it will continue to be paid throughout the absence.

Entitlement during a coronavirus-related absence will apply regardless of any breaks in care in the past six months or, in the case of someone who has recently begun receiving Carer's Allowance, the number of weeks of care provided in the lead-up to the absence. As regards breaks in care which are not related to coronavirus, the usual rules will apply. This will mean that a person who has had an absence related to coronavirus may subsequently be able to take a break in care, for example as a holiday, and continue to be paid. The period of absence from caring due to coronavirus will count as time spent caring, and so will not count against future entitlement to paid breaks.

The change to the rules on breaks in care to accommodate coronavirus absences will automatically cease to have effect eight months after it comes into force. The Scottish Ministers undertake, however, to keep its operation under review throughout the eight-month period.

The function of administering Carer's Allowance, under section 70 of the Social Security Contributions and Benefits Act 1992, transferred to the Scottish Ministers in September 2018. Since this time, the Secretary of State for Work and Pensions ("the Secretary of State") has administered Carer's Allowance on behalf of the Scottish Ministers pursuant to an agency agreement¹. The agency agreement sets out an undertaking by the Secretary of State and the Scottish Ministers to cooperate to ensure that Carer's Allowance is delivered to people resident in Scotland on the same basis as applies to people resident in England and Wales.

On 30 March 2020, the Secretary of State laid the Social Security (Coronavirus) (Further Measures) Regulations 2020, which made equivalent provision to the Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020. The relevant provisions of the Social Security (Coronavirus) (Further Measures) Regulations 2020 apply to England and Wales only and came into force on 30 March 2020. The Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020, therefore, need to be brought into force as soon as possible to ensure that carers in Scotland benefit from the same changes as carers resident in England and Wales.

Although not a matter for the regulations, administrative guidance on entitlement to Carer's Allowance will also be adjusted to provide that, for around the same time as the Regulations are in force, Carer's Allowance recipients may continue to be paid where they provide care outwith the physical presence of the person being cared for. This ensures that, on a temporary basis, other forms of care such as remote provision of emotional support may entitle a person to continue receiving Carer's Allowance, where care in the physical presence of the cared-for person is prevented by coronavirus.

Consultation

There is no statutory requirement to consult on these regulations. However, the proposed change has been communicated to carer organisations, and will be communicated to carers and the public generally via the Scottish Government website.

¹ Carer's Allowance in Scotland: Agency Agreement (2016). Available at: <https://www.gov.uk/government/publications/carers-allowance-in-scotland-agency-agreement-and-service-level-agreement/carers-allowance-in-scotland-agency-agreement>.

Impact Assessments

Impact Assessments have not been prepared for this instrument because of the need to make and lay the instrument urgently. As noted above, however, the Scottish Ministers undertake to keep the operation of these regulations under review.

This is a short-term, emergency measure to avoid carers losing out on payment at a time when many may be prevented from caring in the physical presence of a person, as a result of coronavirus, yet be in even greater than normal need of support. We have considered whether the provisions could constitute conduct prohibited by the Equality Act. The provisions will apply to all persons irrespective of protected characteristic and will, therefore, not constitute direct discrimination on that basis. We have also considered whether the provisions could constitute indirect discrimination but do not consider this to be the case. This temporary measure should have a potentially positive impact on all those in receipt of Carer's Allowance and should in particular benefit women, who make up two thirds of recipients of Carer's Allowance, and those in the lower half of income deciles, given carers in receipt of Carer's Allowance tend to be on lower incomes.

Financial Effects

As these regulations bring the eligibility rules for Carer's Allowance in line with the rules that apply to England and Wales, there should be no impact on the Scottish Budget. The block grant adjustment methodology detailed in the "Agreement between the Scottish Government and the UK Government on the Scottish Government's fiscal framework" published on 23 February 2016, continues to link adjustments to the Scottish block grant in respect of welfare to spending on equivalent policy areas in England and Wales. This means the Scottish Government is funded to provide the same level of benefits as in England and Wales.

The only potential impact on the Scottish Budget would be through the Carer's Allowance Supplement (CAS) which is not covered by the block grant adjustment. However, because eligibility for the first payment of CAS is that a person be in receipt of Carer's Allowance on 13 April 2020, we do not anticipate the change to have any substantial effect on these payments compared with previous costings. Should the provisions in these regulations still be in place on 12 October 2020, the qualifying date for the second payment, it could result in a higher number of CAS payments in December than may have been anticipated, in light of coronavirus-related absences.

Scottish Government
Social Security Directorate

1 April 2020