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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 32**

**SOCIAL SECURITY**

**The Carer's Allowance Up-rating (Miscellaneous Amendments) (Scotland) Regulations 2020**

*Made* - - - - 18th February 2020  
*Laid before the Scottish Parliament* - - - - 19th February 2020  
*Coming into force* - - 6th April 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 70(8), 90, 122(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Carer's Allowance Up-rating (Miscellaneous Amendments) (Scotland) Regulations 2020 and come into force on 6 April 2020.

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(1) 1992 c.4. The function of prescribing the circumstances in which a person is or is not to be treated as gainfully employed, for the purpose of section 70(1)(b) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"), transferred to the Scottish Ministers on the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9), dealing with carer's allowance supplement. The same applies to the function in section 90 of the 1992 Act to make regulations setting out entitlement to child dependency increase, including earning limits. In both cases the transfer is in terms of regulation 4 of S.I. 2017/444, which causes section 53(1) and (2) of the Scotland Act 1998 (c.46) to have effect upon commencement of a provision which relies on the exception in relation to carer's benefits in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998. Section 81 was commenced on 3 September 2018 by regulation 2 of S.S.I. 2018/250. Accordingly, responsibility for the exercise of the functions exercisable by the Secretary of State in relation to carer's allowance has transferred to the Scottish Ministers as regards provision of carer's allowance to people residing in Scotland. The setting of relevant earnings limits falls within that responsibility. The requirement to consult the Social Security Advisory Committee in section 172 of the 1992 Act does not apply to the Scottish Ministers by virtue of section 33 of the Scotland Act 2016 (c.11). Section 90 of the 1992 Act was relevantly amended by paragraph 26 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c.30) and by 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 provision in article 3 of S.I. 2003/938. Section 90 of the 1992 Act 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 saving by section 15(2)(b) of that Act. Section 122(1) of the 1992 Act is cited for the meaning assigned to the word "prescribed". An amendment was made to section 175(1) which is not relevant to these Regulations.

### **Amendment of the Social Security (Invalid Care Allowance) Regulations 1976**

2. In regulation 8(1) of the Social Security (Invalid Care Allowance) Regulations 1976(2) (circumstances in which a person is or is not to be treated as gainfully employed) for “£123”, in both places where it occurs, substitute “£128”.

### **Amendment of the Social Security Benefit (Dependency) Regulations 1977**

3. In paragraph 2B of schedule 2 of the Social Security Benefit (Dependency) Regulations 1977(3) (increase of carer’s allowance for child dependants – earnings limits)—

- (a) for “£240”, in both places where it occurs, substitute “£245”, and
- (b) for “£32” substitute “£33”.

St Andrew’s House,  
Edinburgh  
18th February 2020

*SHIRLEY-ANNE SOMERVILLE*  
A member of the Scottish Government

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(2) [S.I. 1976/409](#). Regulation 8(1) was relevantly amended by [S.I. 1996/2744](#), [S.I. 2002/2497](#) and [S.S.I. 2019/21](#).  
(3) [S.I. 1977/343](#). Paragraph 2B was inserted by [S.I. 1984/1699](#) and last amended by [S.S.I. 2019/21](#).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend earnings limits used to determine entitlement to carer's allowance and entitlement to additional payments payable to carer's allowance recipients, so far as payment is the responsibility of the Scottish Ministers. This adjustment relates to the up-rating, by the Scottish Ministers, of the weekly rate of payment of carer's allowance (see the Carer's Allowance Up-rating (Scotland) Order 2020 ([S.S.I. 2020/116](#))).

Regulation 2 amends regulation 8 of the Social Security (Invalid Care Allowance) Regulations 1976 ([S.I. 1976/409](#)). It 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.

Regulation 3 amends schedule 2 of the Social Security Benefit (Dependency) Regulations 1977 ([S.I. 1977/343](#)). 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 that person is entitled to receive child benefit. 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](#)).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.