

2022 No. 28

SOCIAL SECURITY

**The Carer's Allowance Up-rating (Miscellaneous Amendment)
(Scotland) Regulations 2022**

<i>Made</i>	- - - -	<i>26th January 2022</i>
<i>Laid before the Scottish Parliament</i>		<i>28th January 2022</i>
<i>Coming into force</i>	- -	<i>11th April 2022</i>

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(a) 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 Amendment) (Scotland) Regulations 2022 and come into force on 11 April 2022.

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

2. In regulation 8(1) of the Social Security (Invalid Care Allowance) Regulations 1976(b) (circumstances in which a person is or is not to be treated as gainfully employed) for "£128", in both places where it occurs, substitute "£132".

(a) 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 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. In both cases the transfer is in terms of regulation 4 of the Scotland Act 2016 (Transitional) Regulations 2017 (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 as provided for under section 70 of the 1992 Act 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 under 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 Social Security Contributions and Benefits Act 1992 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. 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.

(b) S.I. 1976/409. Regulation 8(1) was amended by S.I. 1996/2744, S.I. 2002/2497, and S.S.I. 2020/32.

Amendment of the Social Security Benefit (Dependency) Regulations 1977

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

- (a) for “£245”, in both places where it occurs, substitute “£255”, and
- (b) for “£33” substitute “£34”.

St Andrew’s House,
Edinburgh
26th January 2022

BEN MACPHERSON
Authorised to sign by the Scottish Ministers

^(a) S.I. 1977/343. Paragraph 2B was inserted by S.I. 1984/1699. Paragraph 2B was most recently amended by S.S.I. 2020/32 and S.S.I. 2021/170.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend earnings limits used to determine entitlement to carer's allowance and 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 Social Security Up-rating (Scotland) Order 2022 (S.S.I. 2022/XXX)).

Regulation 2 of these Regulations amends regulation 8 of the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409) ("the 1976 Regulations"). 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 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 3 of these Regulations 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 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).

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

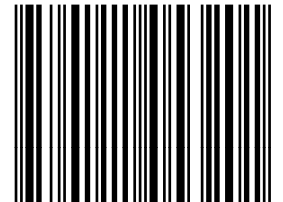
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