

## EXPLANATORY MEMORANDUM TO

### THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (SCOTLAND) REGULATIONS 2023 (CONSEQUENTIAL AMENDMENTS) ORDER 2023

2023 No. 1218

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The Scottish Government is introducing a form of carer's assistance, known as Carer Support Payment, in Scotland. This Order makes consequential amendments to United Kingdom (UK) social security legislation so that Carer Support Payment is treated in the same way as Carer's Allowance. As such Carer Support Payment will act as a qualifying benefit for carer premiums and additions in Income Support, Jobseeker's Allowance, Employment and Support Allowance, State Pension Credit, Housing Benefit and Universal Credit. It will provide entitlement to Class 1 National Insurance credits, qualify the non-resident parent for the flat rate of Child Maintenance, provide an exemption from the benefit cap and work-related conditionality, and arrears will not count as a deceased person's assets for Social Fund Funeral Expenses Payments claims. As for Carer's Allowance, periods of entitlement to Carer Support Payment when paid after state pension age, will be excluded from the State Pension deferral periods.
- 2.2 The Order also ensures that it is not possible for one person to receive a carer element of Universal Credit whilst another person receives Carer Support Payment or Carer's Allowance in respect of care provided to the same person at the same time; and sets out how individuals with rival Carer Support Payment and Carer's Allowance claims can elect which of them receives a benefit in respect of caring for the same individual.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This Order is required to support the devolution of social security benefits in Scotland. The Secretary of State makes this Order in exercise of the powers conferred by section 104 of the Scotland Act 1998<sup>1</sup> ("the 1998 Act"). Section 104 of the 1998 Act allows consequential provision to be made where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.
- 3.2 To ensure that Carer Support Payment is able to operate effectively, and that its recipients are treated equitably, consequential amendments to other UK social security legislation must be in place for its introduction on 19 November 2023. This Order will therefore come into force less than 21 days after it is laid in Parliament.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1998/46/section/104>

- 3.3 This Order could not be laid before 16 November 2023 due to the consequential nature of the amendments. All amendments are consequential on the Scottish Government’s Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023 (“the Carer Support Payment principal regulations”)<sup>2</sup>. In addition, Articles 2, 23 and 29 will form part of the wider legislative framework that prevents one person receiving more than one payment of a carer benefit (regardless of how many people they may care for) and more than one person receiving carer benefits for providing care for the same disabled person at the same time. To be effective, those Articles need to cross reference relevant provisions in primary legislation, as amended by the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023<sup>3</sup> which also makes consequential changes to UK social security legislation. These instruments must be made in the right sequence for the provisions of this Order to work as intended alongside the relevant provisions of primary legislation, which also need to be amended to take account of Carer Support Payment. As the Carer Support Payment principal regulations were made on 25 October 2023 and the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023 on 15 November 2023, this Order could not be made and laid until 16 November 2023, three days before the coming into force date of this Order.
- 3.4 Any delay to the Order coming into force date would mean individuals in receipt of Carer Support Payment in Scotland could not receive the same treatment in terms of benefits entitlement as those in receipt of Carer’s Allowance.

#### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland for Part 1; England and Wales for Part 2; England, Wales and Scotland for Part 3; and Northern Ireland for Part 4.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 This Order is made in exercise of the powers conferred by section 104 of the Scotland Act 1998<sup>4</sup> (“the 1998 Act”). Section 104 of the 1998 Act allows consequential provision to be made where necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.
- 6.2 Under section 28 of the Social Security (Scotland) Act 2018<sup>5</sup>, Scottish Ministers are introducing regulations to replace Carer’s Allowance with Carer Support Payment for individuals ordinarily resident in Scotland. Carer’s Allowance will be replaced in Scotland by Carer Support Payment in a phased approach from 19 November 2023.

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<sup>2</sup> <https://www.legislation.gov.uk/ssi/2023/302/contents/made>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2023/1214/contents/made>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1998/46/section/104>

<sup>5</sup> <https://www.legislation.gov.uk/asp/2018/9/section/28>

Changes in UK social security legislation are needed to allow Carer Support Payment to be treated in the same way as Carer's Allowance is currently treated.

*Avoiding duplicate provision of benefit paid in respect of caring for a disabled person*

- 6.3 Articles 2 and 23 of this Order amend regulation 7 of the Social Security (Invalid Care Allowance) Regulations 1976<sup>6</sup> and regulation 29 of the Universal Credit Regulations 2013<sup>7</sup> to take account of the introduction of Carer Support Payment under the policy that one person cannot receive more than one payment of a carer's benefit (regardless of how many people they may care for) and only one person is entitled to a Carer's Allowance, Carer Support Payment or Universal Credit carer element for providing care for the same disabled person at the same time.

*State Pension, deferrals, and National Insurance credits*

- 6.4 Articles 3, 12, 20 and 27 of this Order amend UK social security regulations dealing with contributions and National Insurance credits for carers. The effect is that receiving Carer Support Payment will entitle an individual to a Class 1 National Insurance credit and exempt a self-employed claimant from having to pay Class 2 contributions. The amendments further prescribe the additional periods an individual can be considered as "engaged in caring" and that Class 3 credits cannot be awarded to a spouse or civil partner of a serving member of the Armed Forces for periods accompanying them on postings outside of the UK during which they are entitled to Carer Support Payment.

- 6.5 The following social security legislation is amended:

- Social Security (Credits) Regulations 1975<sup>8</sup>
- Social Security (Contributions) Regulations 2001<sup>9</sup>
- Social Security (Contributions Credits for Parents and Carers) Regulations 2010<sup>10</sup>
- State Pension Regulations 2015<sup>11</sup>

- 6.6 Articles 4, 15 and 27 of this Order amend regulations relating to deferral of State Pension. This is when a person delays claiming their pension, which increases the amount of their payments when they do decide to claim it. The various deferral regulations prevent a person from getting an increase in their pension payments for any period when they are in receipt of certain benefits, and they are amended to include reference to Carer Support Payment. The effect is that a person who defers their State Pension will not get increased payments for any period during the deferral that they are in receipt of Carer Support Payment.

- 6.7 The following social security legislation is amended:

- Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979<sup>12</sup>

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<sup>6</sup> <https://www.legislation.gov.uk/ukxi/1976/409/regulation/7>

<sup>7</sup> <https://www.legislation.gov.uk/ukxi/2013/376/regulation/29>

<sup>8</sup> <https://www.legislation.gov.uk/ukxi/1975/556/regulation/7A>

<sup>9</sup> <https://www.legislation.gov.uk/ukxi/2001/1004/regulation/43>

<sup>10</sup> <https://www.legislation.gov.uk/ukxi/2010/19/regulation/7>

<sup>11</sup> <https://www.legislation.gov.uk/ukxi/2015/173/contents>

<sup>12</sup> <https://www.legislation.gov.uk/ukxi/1979/642/contents>

- Social Security (Deferral of Retirement Pensions) Regulations 2005<sup>13</sup>
- State Pension Regulations 2015<sup>14</sup>

*Income-Related Benefits*

- 6.8 Articles 5, 7, 8, 14, 17, 18, 19, 23 and 26 of this Order amend multiple regulations so that Carer Support Payment (like Carer’s Allowance) is treated as unearned income, and as a qualifying benefit for carer premiums and additions, in Income Support, Jobseeker’s Allowance, Employment and Support Allowance, State Pension Credit, Housing Benefit and Universal Credit. It will also be a qualifying income for the Savings Credit element of State Pension Credit. In addition, receipt of Carer Support Payment will exempt a household from the benefit cap.
- 6.9 Although Carer Support Payment will generally be taken into account as income, this Order also introduces new regulations to disregard the amount of Carer Support Payment that exceeds the amount of Carer’s Allowance that an individual would be entitled to in England and Wales. The Fiscal Framework Agreement<sup>15</sup> provides that new benefits and discretionary payments paid by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement elsewhere in the UK benefits system. Amounts of Carer Support Payment paid in excess of the rate of Carer’s Allowance would, like the Carer’s Allowance Supplement<sup>16</sup>, be intended to provide new additional income and, as such, they will be disregarded in Income Support, Jobseeker’s Allowance, Employment and Support Allowance, State Pension Credit, Housing Benefit and Universal Credit.
- 6.10 As with Carer’s Allowance, where the carer is entitled to, and in receipt of, Carer Support Payment, the cared for person will not be entitled to the severe disability premium in Income Support, Jobseeker’s Allowance, Employment and Support Allowance and Housing Benefit, or the additional amount for severe disability in State Pension Credit. In Universal Credit both the cared for person and the carer will be entitled, where eligible, to the limited capability for work element or limited capability for work and work-related activity element and the carer element, respectively.
- 6.11 The following social security legislation is amended:
- Income Support (General) Regulations 1987<sup>17</sup>
  - Income Support (Liable Relatives) Regulations 1990<sup>18</sup>
  - Jobseeker’s Allowance Regulations 1996<sup>19</sup>
  - State Pension Credit Regulations 2002<sup>20</sup>
  - Housing Benefit Regulations 2006<sup>21</sup>

<sup>13</sup> <https://www.legislation.gov.uk/uksi/2005/453/regulation/3>

<sup>14</sup> <https://www.legislation.gov.uk/uksi/2015/173/contents>

<sup>15</sup> [Fiscal Framework Agreement.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/68482/Fiscal_Framework_Agreement.pdf)

<sup>16</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2018/1000/act/1)

<sup>17</sup> <https://www.legislation.gov.uk/uksi/1987/1967/contents>

<sup>18</sup> <https://www.legislation.gov.uk/uksi/1990/1777/regulation/2>

<sup>19</sup> <https://www.legislation.gov.uk/uksi/1996/207/contents>

<sup>20</sup> <https://www.legislation.gov.uk/uksi/2002/1792/contents>

<sup>21</sup> <https://www.legislation.gov.uk/uksi/2006/213/contents>

- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>22</sup>
- Employment and Support Allowance Regulations 2008<sup>23</sup>
- Universal Credit Regulations 2013<sup>24</sup>
- Universal Credit (Transitional Provisions) Regulations 2014<sup>25</sup>

Retirement Pension claim requirements

6.12 Article 6 amends regulation 3A of the Social Security (Claims and Payments) Regulations 1987<sup>26</sup>, which sets out when a claim to category A or B retirement pension is not required and the exemptions to this rule. A claim is still required under the provision where the claimant is in receipt of certain benefits. This Order adds Carer Support Payment to the list.

Contributory Benefits

6.13 Articles 8, 19, 24 and 25 of this Order amend multiple regulations regarding contributory Jobseeker's Allowance and Employment and Support Allowance to take account of the introduction of Carer Support Payment so that it is treated in the same way as Carer's Allowance. In Jobseeker's Allowance, Carer Support Payment will have the same effect as Carer's Allowance on waiting days, linking periods and the determination of hours of remunerative work. In Employment and Support Allowance, Carer Support Payment will have the same effect on waiting days, relaxation of the first contribution condition, modification in the calculation of income, and work-related requirements.

6.14 The following social security legislation is amended:

- Jobseeker's Allowance Regulations 1996<sup>27</sup>
- Employment and Support Allowance Regulations 2008<sup>28</sup>
- Jobseeker's Allowance Regulations 2013<sup>29</sup>
- Employment and Support Allowance Regulations 2013<sup>30</sup>

Decisions and appeals

6.15 Article 9 of this Order amends regulation 7 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>31</sup> which makes provision for the circumstances in which the Secretary of State may supersede decisions in Income Support, Jobseeker's Allowance or State Pension Credit, to ensure that where Carer's Allowance ends in circumstances of which the claimant may be unaware, the subsequent payment of the severe disability premium will always be from the last date that Carer's Allowance was paid regardless of when that date was notified. This Order ensures that the same effective date will apply equally to Carer Support Payment.

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<sup>22</sup> <https://www.legislation.gov.uk/uksi/2006/214/contents>

<sup>23</sup> <https://www.legislation.gov.uk/uksi/2008/794/contents>

<sup>24</sup> <https://www.legislation.gov.uk/uksi/2013/376/contents>

<sup>25</sup> <https://www.legislation.gov.uk/uksi/2014/1230/contents>

<sup>26</sup> <https://www.legislation.gov.uk/uksi/1987/1968/regulation/3A>

<sup>27</sup> <https://www.legislation.gov.uk/uksi/1996/207/contents>

<sup>28</sup> <https://www.legislation.gov.uk/uksi/2008/794/contents>

<sup>29</sup> <https://www.legislation.gov.uk/uksi/2013/378/contents>

<sup>30</sup> <https://www.legislation.gov.uk/uksi/2013/379/contents>

<sup>31</sup> <https://www.legislation.gov.uk/uksi/1999/991/regulation/7>

### Work-related conditionality

- 6.16 Articles 10, 11, 13, 21 and 23 of this Order amend social security legislation that provides an exemption to work-related conditionality for carers in Income Support, Jobseeker's Allowance, Employment and Support Allowance and Universal Credit, so that Carer Support Payment is treated in the same way as Carer's Allowance.
- 6.17 The following social security legislation is amended:
- Social Security (Work-focused Interviews) Regulations 2000<sup>32</sup>
  - Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000<sup>33</sup>
  - Social Security (Jobcentre Plus Interviews) Regulations 2002<sup>34</sup>
  - Employment and Support Allowance (Work-Related Activity) Regulations 2011<sup>35</sup>
  - Universal Credit Regulations 2013<sup>36</sup>

### Social Fund

- 6.18 Article 16 of this Order amends regulation 10 of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005<sup>37</sup>, which prescribes when benefit arrears will not count as a deceased person's assets for Social Fund Funeral Expenses Payments claims. This Order adds Carer Support Payment to the list.

### Child Maintenance

- 6.19 Article 22 of this Order amends regulation 44 of the Child Support Maintenance Calculation Regulations 2012<sup>38</sup>, which prescribes the benefits that qualify the non-resident parent for the flat rate of Child Maintenance. This Order adds Carer Support Payment to the list.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Scotland Act 2016<sup>39</sup> devolved responsibility for certain social security benefits, including Carer's Allowance, to the Scottish Parliament. Section 28 of the Social Security (Scotland) Act 2018<sup>40</sup> confers powers on the Scottish Government to introduce forms of carer's assistance through regulations. Scottish Ministers are introducing regulations to replace Carer's Allowance with Carer Support Payment in Scotland from 19 November 2023.

### *Explanations*

- 7.2 When introduced Carer Support Payment will be broadly similar to Carer's Allowance. As such, the UK Government has agreed that, in the immediate term,

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<sup>32</sup> <https://www.legislation.gov.uk/uksi/2000/897/regulation/6>

<sup>33</sup> <https://www.legislation.gov.uk/uksi/2000/1926/regulation/2ZB>

<sup>34</sup> <https://www.legislation.gov.uk/uksi/2002/1703/regulation/4>

<sup>35</sup> <https://www.legislation.gov.uk/uksi/2011/1349/contents>

<sup>36</sup> <https://www.legislation.gov.uk/uksi/2013/376/regulation/89>

<sup>37</sup> <https://www.legislation.gov.uk/uksi/2005/3061/regulation/10>

<sup>38</sup> <https://www.legislation.gov.uk/uksi/2012/2677/regulation/44>

<sup>39</sup> <https://www.legislation.gov.uk/ukpga/2016/11/contents>

<sup>40</sup> <https://www.legislation.gov.uk/asp/2018/9/section/28>

Carer Support Payment should interact with UK Government reserved benefits in the same way as Carer's Allowance, so that individuals in Scotland receive similar treatment to those in England and Wales. Similar provision is also made in relation to Northern Ireland.

- 7.3 This Order makes the necessary amendments to achieve this. Further amendments may be required in future should there be changes to Carer Support Payment.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Consolidation is not required.

## **10. Consultation outcome**

- 10.1 There is no requirement to submit section 104 Orders to the Social Security Advisory Committee for scrutiny, although a copy has been shared with them for information.
- 10.2 As amendments in this Order are consequential, a formal consultation on the draft Order was not considered necessary.
- 10.3 However, a public consultation on the proposals for a replacement benefit for Carer's Allowance was conducted by the Scottish Government between 28 February 2022 and 25 May 2022<sup>41</sup>. It received around 200 responses. Overall, the proposals set out in the consultation paper were welcomed.

## **11. Guidance**

- 11.1 Operational guidance for Department for Work and Pensions and Department for Communities staff will be updated by 19 November 2023 to include the introduction of Carer Support Payment and explain how it affects other entitlements. In addition, the Decision Makers' Guide and Advice for Decision Makers will be updated and available on the guidance for decision makers section of Gov.UK<sup>42</sup>.
- 11.2 The guidance about the changes to Housing Benefit will be available on the 'Housing Benefit for local authorities' section of Gov.UK<sup>43</sup>.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

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<sup>41</sup> <https://www.gov.scot/publications/scottish-carers-assistance-consultation>  
<https://www.gov.scot/publications/social-security-scottish-carers-assistance-consultation-scottish-government-response>

<sup>42</sup> <https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>

<sup>43</sup> <https://www.gov.uk/government/collections/housing-benefit-for-local-authorities-circulars>

**13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

**14. Monitoring & review**

14.1 The approach to monitoring of this legislation is through normal business accuracy and assurance processes. These amendments will be considered again should Carer Support Payment change in the future.

**15. Contact**

- 15.1 Fiona Dunn at the Department for Work and Pensions (email: [Fiona.Dunn@dpw.gov.uk](mailto:Fiona.Dunn@dpw.gov.uk)) can be contacted with any queries regarding the instrument. David Tarr at the Department for Communities in Northern Ireland ([David.tarr@communities-ni.gov.uk](mailto:David.tarr@communities-ni.gov.uk)) can be contacted with any queries regarding the parts of this instrument relating to Northern Ireland.
- 15.2 Andrew Latto, Deputy Director at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Tom Pursglove MP, the Minister for Disabled People, Health and Work at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.