

## EXPLANATORY MEMORANDUM TO

### THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (SCOTLAND) REGULATIONS 2023 (CONSEQUENTIAL AMENDMENTS) ORDER 2024

2024 No. 282

#### 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.

#### 2. Purpose of the instrument

- 2.1 The Scottish Government has introduced a carer's assistance, known as Carer Support Payment, in Scotland. This Order makes consequential amendments to social security legislation so that Carer Support Payment is treated in the same way as Carer's Allowance in the following circumstance: where someone is entitled to arrears of a benefit<sup>1</sup> for a period for which the claimant has already received Carer Support Payment, the arrears will be reduced or offset by the amount of the Carer Support Payment received. Any outstanding balance will be paid.

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

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

- 3.1 None

#### 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.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

#### 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 1998 Act<sup>2</sup>.
- 6.2 Under section 28 of the Social Security (Scotland) Act 2018<sup>3</sup>, Scottish Ministers introduced regulations to replace Carer's Allowance with Carer Support Payment for individuals ordinarily resident in Scotland. Carer's Allowance has been replaced in

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<sup>1</sup> The benefits are: State Pension, Incapacity Benefit, Severe Disablement Allowance, Unemployability Supplement that is paid with Industrial Injuries Disablement benefit or War Pension, Widow's Pension or Bereavement Allowance, Widowed Mother's Allowance or Widowed Parent's Allowance, War Widow's or Widower's Pension, Maternity Allowance, Industrial Death Benefit, Contribution-based Job Seeker's Allowance, Contributory Employment and Support Allowance and Universal Credit.

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1998/46/section/104>

<sup>3</sup> <https://www.legislation.gov.uk/asp/2018/9/section/28>

Scotland by Carer Support Payment in a phased approach from 19 November 2023<sup>4</sup>. Changes in UK legislation are needed to allow Carer Support Payment to be treated in the same way as Carer's Allowance is currently treated.

## **7. Policy background**

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

- 7.1 The Scotland Act 2016<sup>5</sup> devolved responsibility for certain social security benefits, including Carer's Allowance, to the Scottish Parliament. Scottish Ministers introduced Carer Support Payment in Scotland from 19 November 2023 to replace Carer's Allowance.
- 7.2 The overarching intention is that Carer Support Payment should be broadly similar to Carer's Allowance. As such, it is necessary that the same rules apply to prevent duplicate payments being made. This Order makes the necessary amendments to achieve this as follows.
- 7.3 The amendments ensure that where a claimant is entitled to arrears of a benefit for a period for which the claimant has already received Carer Support Payment – this will in the main arise where someone living in Scotland claims one of the benefits listed above in footnote 1 - the arrears will be reduced or offset by the amount of the Carer Support Payment already received. Any outstanding balance will be paid.

## **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>6</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 11 March 2024. In addition, the Decision Makers' Guide and Advice for Decision Makers<sup>7</sup> will be updated alongside the

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<sup>4</sup> Initially, three areas: Perthshire & Kinross, City of Dundee and the Western Isles. Scotland will need to regulate to extend beyond these areas.

<sup>5</sup> <https://www.legislation.gov.uk/ukpga/2016/11/contents>

<sup>6</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>7</sup> <https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>

introduction of these changes and available on Gov.UK – this is accessible to claimants.

## **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. This is because these changes are consequential amendments to social security legislation and maintain the current policy so that Carer Support Payment is treated in the same way as Carer's Allowance in the immediate term.

## **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 Lyndon Walters at the Department for Work and Pensions (email [Lyndon.walters@dwp.gov.uk](mailto:Lyndon.walters@dwp.gov.uk) ) can be contacted with any queries regarding the instrument.
- 15.2 Samantha Hainsworth, Deputy Director at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Viscount Younger, Parliamentary Under Secretary of State at the Department of Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.