

The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

Policy Note

March 2023

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SSI 2023/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 28(2), [36(2),] 41(4)(a), 43(5), 51(1), 52, and 95 of the Social Security (Scotland) Act 2018¹. The instrument is subject to *affirmative procedure*.

Summary Box

This instrument sets out the rules and eligibility criteria for Carer Support Payment (CSP), a form of assistance to provide support to people providing regular and substantial care to another individual who normally receives a certain rate of disability assistance. This new form of social security assistance will be administered by Social Security Scotland and will replace Carer's Allowance (CA) in Scotland.

This instrument also includes provision to transfer the benefits of individuals who live in Scotland and receive CA (which is currently administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive CSP, to be administered by Social Security Scotland on behalf of the Scottish Ministers.

Policy Objectives

Carer Support Payment (CSP) is intended to improve outcomes for unpaid carers by providing financial assistance to those providing regular and substantial care to someone in receipt of a qualifying disability benefit. Carer Support Payment will be an income-replacement benefit in recognition of the impact of caring on carers' ability to earn income through paid work. It is also intended to provide recognition of the vital caring role being provided, and the wider impact of this on carers, and to help support carers to access opportunities outside of caring.

Carer Support Payment will replace Carer's Allowance (CA) in Scotland. It will be delivered by Social Security Scotland on behalf of Scottish Ministers. Carer Support Payment systems and processes are being designed with carers and support organisations in line with our aim to ensure carers have a positive experience of the social security system, and to maximise carers' take-up of all support available to them. As part of this, information, notifications and services relating to Carer Support Payment are being designed to increase carers' awareness of the wider carer support and services available.

The regulations include provisions detailing the eligibility criteria, rate of assistance, making of applications and payments for Carer Support Payment. Eligibility criteria for Carer Support Payment set out in these regulations for the initial launch of the benefit will broadly align with the eligibility criteria for Carer's Allowance. This is to protect the safe and secure transfer of benefits for carers in Scotland who are already receiving Carer's Allowance, until the point that this transfer process is complete. It is also intended to avoid a 'two tier system' during this time in which carers receiving Carer's Allowance and Carer Support Payment would otherwise

¹ <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

be treated differently. At the same time, regulations will ensure that Carer Support Payment is delivered in line with the Social Security principles within the framework of the Social Security (Scotland) Act 2018 ('the 2018 Act') and provide consistency with other benefits delivered by the Scottish Government wherever possible.

In line with the above, Carer Support Payment will be available to people aged 16 or over, who are providing 35 or more hours of care a week to someone in receipt of a qualifying disability benefit. Carers must be earning less than £139 per week from employment or self-employment. [Part 3 of the schedule to the regulations provides for how earnings will be calculated for the purpose of this, which aligns with the calculation of earnings for Carer's Allowance.]

Residence and presence conditions

Provisions relating to the residence criteria are included in the draft Regulations in line with the devolved disability benefits – Child and Adult Disability Payments. Regulation 6 sets out the residence and presence criteria that need to be met. [This provides for a reduced past presence test compared to that currently in place for Carer's Allowance to allow carers moving into the Common Travel Area to access support sooner. This requires an individual to have been present in the Common Travel Area for 26 of the past 52 weeks in order to receive support. It also sets out circumstances where the test is dis-applied including where a person is receiving support under the Special Rules for Terminal Illness, has a refugee or humanitarian protection status, or is caring for someone who meets these criteria.]

Individuals in education

Provisions relating to education are included in the draft Regulations (Regulation 11). From launch these will mirror the current Carer's Allowance rules which prevent anyone in full-time education (21 hours or more per week) from receiving the benefit.

Amount of Carer Support Payment

Regulations provide for the rate at which Carer Support Payment will be paid. Carers receiving Carer Support Payment will be entitled to Carer's Allowance Supplement in the same way as carers in Scotland receiving Carer's Allowance.

As an income-replacement benefit, it will not be possible for carers to receive Carer Support Payment in full at the same time as another income-replacement benefit. Regulation 16 also provides that the amount of Carer Support Payment may be reduced or set to £0 where a carer is receiving another 'overlapping benefit'.

[Regulation 17 also provides for a process that would replicate the effect of the 'abatement' process used internally within the Department for Work and Pensions (DWP) to address overpayments of income-based legacy benefits that occur as a result of Carer Support Payment being paid in respect of the same periods.]

Regulation 20 is intended to ensure carers are able to access all the support they are entitled to where they make an application for Carer Support Payment which they would be eligible to backdate to a point before the regulations were in force, but would have been unable to apply for Carer's Allowance at that time. This may happen in situations where the benefit of the person they care for is backdated following a Tribunal decision. Regulations provide that the carer's application can be treated as an application for Carer's Allowance and payments can be treated as payments of Carer's Allowance in respect of the period before the regulations came into force.

Suspension of assistance

Provisions relating to suspension of assistance are included in the draft Regulations in line with provisions set out in the 2018 Act. Regulation 29 sets out the specific circumstances in which entitlement can be suspended. Suspension powers are limited in line with the overall approach for devolved benefits, in recognition of concerns around the impact of benefit suspensions on clients. Broadly we will suspend payments where information has not been provided on time, where a third party is unable to receive payments, or where there is suspected financial abuse. Regulations also set out the considerations that Scottish Ministers must make before suspending assistance to prevent hardship to carers, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs, circumstances in which a suspension should end and the effect of a suspension ending.

Nil awards

Regulation 23 provides for an ongoing award of Carer Support Payment to be set to £0 in certain circumstances. This is intended to prevent overpayments where a carer is not entitled to support but it is anticipated to be a temporary break in entitlement. This will prevent the need for an award to be ended and carers to re-apply for support. Carer Support Payment awards would be set to £0 for any week in which a cared for person's qualifying benefit award is set to £0 or not in payment, when it is suspended in certain circumstances, or when it is ended. An award of Carer Support Payment may also be set to £0 where a carer has earnings over the earnings limit, or where they have exceeded the allowed amount of breaks in care.

Case Transfer from CA to CSP

The regulations include provisions to transfer the awards of individuals who live in Scotland and receive Carer's Allowance (which is administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive Carer Support Payment, to be administered by Social Security Scotland on behalf of Scottish Ministers.

Scottish Ministers have developed a safe and secure process, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

- no individual will be required to re-apply for their benefit;
- individuals will receive clear communications about the case transfer process;
- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

Notice of intent to transfer

When an individual's carer benefit has been selected for transfer, Scottish Ministers will receive data and information relevant to the individual's most recent Carer's Allowance award from DWP. Once Scottish Ministers have received this information, the regulations make provision for the Scottish Ministers to notify the individual of the intention to transfer them to Carer Support Payment. This notice will set out the process for that transfer.

Determination without application

Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to Carer Support Payment on a like-for-like basis within a fixed period set out in the notice of intention to transfer. This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good

reason to do so. The individual will be notified of any extension of the period and the reasons for it.

The determination of the individual's entitlement to Carer Support Payment will also end the corresponding award of Carer's Allowance. A determination of entitlement in respect of Carer Support Payment made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

Residence

Scottish Ministers will identify individuals who will transfer from Carer's Allowance to Carer Support Payment using the residential address held by DWP in the individual's Carer's Allowance record. An individual will be assumed to meet the residence and presence conditions for Carer Support Payment at the point of transfer if they have a Scottish postcode.

If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Carer Support Payment determination and the resulting entitlement. This will also undo the termination of the Carer's Allowance award.

Appointees

All individuals appointed by DWP in respect of a Carer's Allowance award, who have not already been appointed by Scottish Ministers for the same individual, will be temporarily deemed to act as an appointee for the purposes of Carer Support Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

Payment cycles

Provisions relating to case transfer clients receiving Carer's Allowance on a 3+1 payment cycle (where they are paid one week in advance and three weeks in arrears) are included in the draft Regulations. Regulation 7 of Part 2 of the Schedule sets out the specific provisions ensuring people receive the right payments at the right time on case transfer with no gap in support. The regulation set out provisions to move the awards of case transfer clients on a 3+1 payment cycle to a 4 weekly in arrears payment cycle, with the option to request a move to weekly in advance payments.

Consultation

Between 28 February 2022 and 23 May 2022, the Scottish Government undertook a public consultation on how our replacement benefit for Carer's Allowance could work better for carers, from launch, and in future. The consultation received around 200 responses from individuals and stakeholder organisations. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. During the consultation period officials attended Carers Scotland's Annual Carers Summit and nine engagement events were undertaken to hear from a wide and diverse range of carers. Specific research was also carried out with Social Security Scotland Experience Panels, with 242 members responding to a survey, and 16 follow up interviews. This took place between March and July 2022. Following the consultation period, a series of

workshops to take feedback on proposals in light of the consultation responses were held with the Carer Benefits Advisory Group (CBAG)².

An analysis of the responses to the consultation was published on 8 November³. A summary report⁴ from the research with experience panel members was published on 9 November 2022. The Scottish Government will publish a response to the public consultation in March 2023.

Respondents were broadly supportive of the policy proposals, and general, the approach outlined in the consultation paper was perceived to be more sympathetic, flexible, and person-centred. Respondents were supportive of aligning the approach on residence and re-determinations and appeals with the disability benefits, and on the use of ‘nil rating’ as a way to prevent overpayments and reduce the need for carers to re-apply for support after temporary breaks in entitlement. The response to the consultation has informed the development of policy for Carer Support Payment, including the strong support for:

- the proposal to provide an improved service to carers, joining up with wider services to help carers access clear information on the support available to them has guided policy development. There will be a strong focus on providing information and signposting from launch, linking carers to other services at key moments of transition such as the start or end of a caring role, and supporting carers to access opportunities outside of caring, should they wish to do so; and
- the proposal to reduce the education restriction, with work ongoing to develop the detail of this policy and impact when, in future, this change can be made to ensure those in full time advanced education can access Carer Support Payment.

Case transfer

In January and February 2019, two surveys regarding the case transfer process for disability assistance were sent out to Experience Panel members. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019. These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

Additionally, the Scottish Government has been working with relevant stakeholders including the Disability and Carer Benefits Expert Advisory Group (DACBEAG), to develop and receive advice on case transfer principles and the development of the approach to case transfer. Scottish Government officials presented to DACBEAG members on proposed case transfer policy on 3 November 2022, highlighting issues specific to Carer’s Allowance case transfer, such as payment cycles, earnings and breaks in care. DACBEAG’s advice of 9 December 2022 provided recommendations in relation to payment cycles and earnings, and this advice has been used in developing the policy for these areas.

Scottish Commission on Social Security - scrutiny of the draft Regulations

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Ministers are required to inform the Scottish Commission on Social Security (SCoSS) of their proposals in relation to regulations made under any section in Chapter 2 of Part 2 to the 2018 Act. Having been informed of any such proposals, SCoSS must then prepare a report setting out its observations and recommendations in relation to the proposals. SCoSS may also be required to scrutinise and report on any further matters which the Scottish Ministers request under section 22(1)(b)

² Carer Benefits Advisory Group - gov.scot (www.gov.scot)

³ Introduction - Scottish Carer's Assistance: consultation analysis - gov.scot (www.gov.scot)

⁴ Social Security Experience Panels - Scottish Carer's Assistance: visual summary - gov.scot (www.gov.scot)

of the 2018 Act. As a result a draft of the regulations is now shared with SCoSS. Given the complexities of Carer Support Payment the Scottish Government considers it appropriate to request SCoSS' scrutiny of the entirety of the draft Regulations rather than limiting the request to the specific regulations that fall under section 97 of the 2018 Act.

The Scottish Government will publish its formal response to SCoSS's report when laying these regulations before the Scottish Parliament.

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, and a Children's Rights and Wellbeing Impact Assessment are being developed alongside Carer Support Payment policy at launch. Outline assessments were published with the consultation to take feedback from respondents.

Current evidence on existing Carer's Allowance recipients tells us that 90% of them live in a household with a disabled person, 70% of them are women and 11.5% are from lone parent households. They are also more likely to be in the bottom half of the income distribution. BAME carers are more likely to face financial difficulties and those with intensive caring roles are more likely to live in socially deprived areas.

It is anticipated from the analysis in the impact assessments that the commencement of Carer Support Payment will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children's rights and improving their wellbeing. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations, however the impact assessments will set out the actions we will take in delivering Carer Support Payment to reach the broadest possible range of carers.

A Data Protection Impact Assessment (DPIA) is also being prepared in relation to this instrument.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed [and is provided with this instrument]. The Scottish Government does not believe that Carer Support Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The Scottish Government expects that there may be limited impact on the operational business of local authorities or health boards as a result of introducing these regulations.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Carer Support Payment. Current recipients of Carer's Allowance are already able to access legal aid to appeal entitlement decisions.

Scottish Government

Social Security Directorate

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