POLICY NOTE

THE CARER'S ALLOWANCE (CORONAVIRUS) (BREAKS IN CARE) (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/350

The above instrument was made in exercise of the powers conferred by section 70(8) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992. The instrument is subject to negative procedure.

Purpose of the instrument

These Regulations extend the application of regulation 2 of The Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020 ("the Breaks in Care regulations"), which makes temporary changes to Carer's Allowance rules on breaks in care in light of coronavirus. This has the effect that breaks in care taken as a result of a carer or cared-for person's infection with, or self-isolation due to, coronavirus do not count towards a carer's total permitted breaks. Regulation 2 of the Breaks in Care Regulations is due to expire automatically on 03 December 2020, but these Regulations will amend the expiry date so that regulation 2 will have effect until the end of the day on 12 May 2021.

These Regulations also make provision to ensure that breaks in care which are discounted while regulation 2 has effect cannot be counted once again when it expires.

Policy Objectives

To be eligible for Carer's Allowance, a carer must be, or be likely to be, providing 35 hours or more of care a week to a severely disabled person. In any 26-week period, a carer may have up to four weeks' 'break' where they do not provide this level of care but are treated as if they have for the purpose of being entitled to Carer's Allowance.

The Breaks in Care Regulations were laid to make temporary changes to Carer's Allowance rules so that where a carer is prevented from meeting the caring hours requirement because they, or the person they care for, are ill as a result of coronavirus, or are isolating themselves, in line with government guidance on coronavirus, this break in care would not be counted towards their permitted breaks in care. The effect of this is that carers who have used up all of their permitted breaks in care for a 26-week period will not lose their Carer's Allowance if they fall ill with coronavirus or are required to self-isolate and are unable to provide care as a result. The same will apply if infection or self-isolation of the cared-for person prevents care being provided. Equally carers who have to take a break from caring due to coronavirus or self-isolation during a 26-week period will not lose out on Carer's Allowance during other breaks later on in the same period.

Regulation 2 of the Breaks in Care Regulations is due to expire on 03 December 2020, and the purpose of these Regulations is to extend the period for which it has effect, until the end of the day on 12 May 2021. This is because it is considered the adjustment is still required to protect carers' entitlement to Carer's Allowance given increasing coronavirus infections and current Government guidance to reduce the spread of coronavirus.

The function of administering Carer's Allowance, under section 70 of the Social Security Contributions and Benefits Act 1992, transferred to the Scottish Ministers in September 2018. Since this time, the Secretary of State for Work and Pensions ("the Secretary of State") has administered Carer's Allowance on behalf of the Scottish Ministers pursuant to an agency agreement. The agency agreement sets out an undertaking by the Secretary of State and the Scottish Ministers to cooperate to ensure that Carer's Allowance is delivered to people resident in Scotland on the same basis as applies to people resident in England and Wales. The extension of regulation 2 mirrors the extension of the equivalent regulation which applies to England and Wales, in line with the agency agreement.

Provision is also included in these Regulations to ensure that where an individual's break in care is discounted while regulation 2 of the Breaks in Care regulations has effect, it cannot be counted again when regulation 2 has expired. If this protection was not in place, carers could otherwise lose out on entitlement to Carer's Allowance during any breaks later in a 26 week period. This may in practice mean losing out on further breaks.

When the original Regulations were introduced, administrative guidance on Carer's Allowance was also amended to allow for care which does not take place in the physical presence of the cared-for person to count towards the caring hours requirement for Carer's Allowance. This was to ensure that, on a temporary basis, other forms of care such as remote provision of emotional support may entitle a person to continue receiving Carer's Allowance, where care in the physical presence of the cared-for person is prevented by coronavirus. This is not a matter for regulations but these guidance changes will also remain in place in line with the extension of regulation 2.

Consultation

There is no statutory requirement to consult on these Regulations. However, informal consultation with stakeholders on the changes to Carer's Allowance rules has been undertaken by both Scottish Government and the Department of Work and Pensions and informed the decision to extend the regulations, and to retain the adjusted guidance on caring.

Stakeholders felt that the original date for expiry of regulation 2 should be postponed in light of increasing coronavirus infections, changes to restrictions, and the likelihood of increasing requirements for individuals to self-isolate as a result of the Test and Protect system. Stakeholders also highlighted that continuing to discount breaks in care where a carer or cared-for person is ill or self-isolating would reduce the potential risks to carers' wellbeing.

Impact Assessments

Impact Assessments have not been prepared for this instrument because of the requirement to make and lay this urgently. As noted above, however, consultation has been undertaken with stakeholders on the potential impacts of the extension of regulation 2 of the Breaks in Care regulations, and it is considered that the impacts should be positive for the carers and cared for people affected.

We have considered whether the provisions could constitute conduct prohibited by the Equality Act. The provisions will apply to all persons irrespective of protected characteristic and will, therefore, not constitute direct discrimination on that basis. We have also considered whether the provisions could constitute indirect discrimination but do not consider this to be

the case. This temporary measure will affect those in receipt of Carer's Allowance, and in particular women, who make up two thirds of recipients of Carer's Allowance, and those in the lower half of income deciles, given carers in receipt of Carer's Allowance tend to be on lower incomes.

Financial Effects

As these regulations bring the eligibility rules for Carer's Allowance in line with the rules that apply to England and Wales, there should be no impact on the Scottish Budget. The block grant adjustment methodology detailed in the "Agreement between the Scottish Government and the UK Government on the Scottish Government's fiscal framework" published on 23 February 2016, continues to link adjustments to the Scottish block grant in respect of welfare to spending on equivalent policy areas in England and Wales. This means the Scottish Government is funded to provide the same level of benefits as in England and Wales.

The only potential impact on the Scottish Budget would be through the Carer's Allowance Supplement which is not covered by the block grant adjustment. The initial Breaks in Care regulations were not considered to have any substantial effect on Carer's Allowance Supplement payments compared with previous costings. The extension of regulation 2 means this will remain in force for a further Carer's Allowance Supplement qualifying date, in April 2021, which could result in a higher number of Carer's Allowance Supplement payments in June 2021 than may have been anticipated, in light of coronavirus-related absences. However, this is also expected to have a minimal impact on Carer's Allowance Supplement expenditure.

Scottish Government
Social Security Directorate

3rd November 2020