EXPLANATORY MEMORANDUM TO

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

2023 No. 1214

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order makes consequential amendments to social security legislation in respect of Great Britain and Northern Ireland to ensure that those receiving Carer Support Payment in Scotland are treated in the same way as those receiving Carer's Allowance. It ensures they can receive the 'Christmas Bonus' and the additional amount of State Pension Credit, and are able to access compensatory payments as part of the HMRC Tax-Free Childcare scheme. The Order also ensures that it is not possible for an individual to receive Carer's Allowance and Carer Support Payment at the same time; or for one person to receive Carer's Allowance and/or a carer element of Universal Credit whilst another person receives Carer Support Payment in respect of care provided to the same person; or for an individual to receive certain overlapping benefits, administered by Veterans UK, at the same time as Carer Support Payment.

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, and Northern Ireland for Part 1; England and Wales for Part 2; Scotland for Part 3; England and Wales, and Scotland for Part 4; Northern Ireland for Part 5; and England and Wales, Scotland, and Northern Ireland for Part 6.

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 The Secretary of State for Scotland, Alister Jack, has made the following statement regarding Human Rights:

"In my view the provisions of the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Modifications) Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1), 113(4)(a), 113(5) and 113(7) of the Scotland Act 1998[1] ("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[2], 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 November 2023.

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

6.3 Articles 2 and 3 of this Order amend section 70(7) of the Social Security Contributions and Benefits Act 1992[3] ("the 1992 Act") to take account of the introduction of Carer Support Payment so that one person cannot receive Carer's Allowance and Carer Support Payment at the same time (regardless of how many people they may care for), and so that only one person is entitled to a Carer's Allowance, Carer Support Payment or Universal Credit carer element for the same severely disabled person at the same time. This maintains the UK and Scottish Government's policy intent in relation to duplicate claims. Article 7 of this Order makes the corresponding amendments to Northern Ireland legislation.

'Christmas Bonus'

6.4 Article 4 of this Order amends section 150 of the 1992 Act, which prescribes the qualifying benefits for the 'Christmas Bonus', so that people entitled to Carer Support Payment are also entitled to a 'Christmas Bonus'.

State Pension Credit

6.5 Section 2(8) of the State Pension Credit Act 2002[4] requires there to be additional amounts for qualifying carers included in the calculation of the appropriate minimum guarantee in the guarantee credit element of State Pension Credit. Article 5 of this Order ensures that people who are entitled to Carer Support Payment are considered qualifying carers for this purpose in the same way as claimants of Carer's Allowance. Article 8 of this Order makes the corresponding amendments to Northern Ireland legislation.

Decisions against which no appeal lies

6.6 Article 6 of this Order amends schedule 2 of the Social Security Act 1998[5], which prescribes decisions which do not carry a right of appeal, to take account of changes in Articles 2 and 3 of this Order. This maintains the UK Government's policy intent for Carer's Allowance and Universal Credit decisions in relation to multiple people caring for the same severely disabled person at the same time. Article 9 of the Order makes the corresponding amendments to Northern Ireland legislation.

[1] 1998, c. 46, https://www.legislation.gov.uk/ukpga/1998/46/contents
[2] 2018 asp 9, https://www.legislation.gov.uk/asp/2018/9
[3] 1992, c. 4, https://www.legislation.gov.uk/ukpga/1992/4/contents
[4] 2002, c. 16, https://www.legislation.gov.uk/ukpga/2002/16/contents
[5] 1998 c. 14, https://www.legislation.gov.uk/ukpga/1998/14/contents

Severe Disablement Occupational Allowance

6.7 Articles 10 and 11 amend the Personal Injuries (Civilians) Scheme 1983[6], and the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006[7] to provide that Carer Support Payment can't be paid to an individual at the same time as a Severe Disablement Occupational Allowance.

Tax-Free Childcare

6.8 Article 12 of this Order ensures that compensatory payments, as provided for in the Childcare Payments Regulations 2015[8], can be made to someone in the HMRC Tax-Free Childcare scheme where they should have been eligible for Tax-Free Childcare but HMRC were unable to confirm eligibility due to an outstanding application for Carer Support Payment, in the way that is possible now in relation to applications for Carer's Allowance.

7. Policy background

What is being done and why?

7.1 The Scotland Act 2016[9] devolved responsibility for certain social security benefits, and employment support, to the Scottish Parliament. Section 28 of the Social Security (Scotland) Act 2018 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 the end of 2023.

7.2 Carer Support Payment will initially operate in a broadly similar way to Carer's Allowance. As such, the UK Government has agreed that, in the immediate term, Carer Support Payment can act as a qualifying benefit for additional carer related payments and exemptions in reserved benefits in the same way as Carer's Allowance so that individuals in Scotland receive similar treatment to those in England and Wales, and Northern Ireland.

7.3 This Order makes amendments to ensure that relevant social security legislation relating to Great Britain, and also, in certain respects, Northern Ireland, is updated as a consequence of the introduction of Carer Support Payment in Scotland. Further amendments may be required in future should there be changes to Carer Support Payment.

7.4 This Order will ensure that people receiving Carer Support Payment are treated consistently with those receiving Carer's Allowance. In particular, it will ensure that recipients of the benefit are entitled to the Department for Work and Pensions ("DWP") 'Christmas Bonus' payment, additional amounts of State Pension Credit, and compensatory payments as part of the HMRC Tax-Free Childcare scheme. It will prevent individuals from being able to receive Carer Support Payment if they are receiving Severe Disablement Occupational Allowance, as the two benefits overlap. It will also ensure that carers should not be able to receive Carer's Allowance and Carer Support Payment at the same time, and that it should not be possible for one carer to

[6] 1983, No. 686, https://www.legislation.gov.uk/uksi/1983/686/contents/made
[7] 2006, No. 606, https://www.legislation.gov.uk/uksi/2006/606/contents
[8] 2015, No. 522, https://www.legislation.gov.uk/uksi/2015/522/contents
[9] 2016, c. 11, https://www.legislation.gov.uk/ukpga/2016/11/contents

receive Carer's Allowance, and another to receive Carer Support Payment, in respect of care which is provided to the same person.

7.5 This Order makes equivalent provision in Northern Ireland in respect of those policy areas that are transferred to Northern Ireland because when a claimant moves to Northern Ireland they will continue to receive Carer Support Payment for 13 weeks while they apply for Carer's Allowance, and their Carer Support Payment benefit will continue to attract the related entitlements.

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

7.6 The purpose of section 70(7) of the 1992 Act is to provide that one person cannot receive more than one payment of Carer's Allowance (regardless of how many people they care for) and only one person can qualify for Carer's Allowance or the carer element in Universal Credit in respect of care for the same severely disabled person at the same time. Similarly, Scottish Ministers have provided in Regulation 5 of the Carer Support Payment Regulations that a person cannot receive more than one payment of Carer Support Payment (regardless of how many people they care for), and, in Regulation 24 of the Carer Support Payment Regulations, that Carer Support Payment can only be paid where there is no one else receiving Carer Support Payment, Carer's Allowance or the carer element in Universal Credit for caring for the same severely disabled person at the same time.

7.7 This amendment adds Carer Support Payment to Carer's Allowance and the carer element in Universal Credit already covered by section 70 of the 1992 Act and sets out how Carer's Allowance cases will be determined where there is also a Carer Support Payment claim in respect of caring for the same severely disabled person at the same time. Corresponding amendments are made to Northern Ireland legislation.

'Christmas Bonus'

7.8 The 'Christmas Bonus' provides an annual one-off tax-free payment to people who receive a qualifying benefit in the qualifying week. The qualifying benefits include Carer's Allowance. This amendment adds Carer Support Payment to the list of qualifying benefits.

State Pension Credit

7.9 State Pension Credit provides a guarantee credit to ensure a minimum level of income from state pension age. A person's appropriate minimum guarantee includes an additional amount in respect of caring if a person is entitled to Carer's Allowance.

7.10 This amendment allows a person to qualify for the additional amount for carers in an award of State Pension Credit where they are entitled to a Carer Support Payment.

Severe Disablement Occupational Allowance

7.11 Severe Disablement Occupational Allowance is an additional amount which can be paid to veterans as part of the War Pensions scheme, or to, or in respect of, civilians injured or killed in World War 2. Carer Support Payment, as an income replacement benefit, is considered to overlap with these benefits in the same way as Carer's Allowance. The amendments will ensure that, in line with this, it will not be possible for an individual to receive both benefits at the same time.

Tax-Free Childcare

7.12 Tax-Free Childcare is a UK-wide government scheme aimed at helping working parents with their childcare costs. Receipt of Carer Support Payment will affect eligibility for the Tax-Free Childcare scheme in the same way as a receipt of Carer's Allowance, allowing a person with caring responsibilities to be treated as being in qualifying work for the purposes of the scheme. Amendments being made through this instrument will allow individuals to receive compensatory payments from the Tax-Free Childcare scheme where they should have been eligible for Tax-Free Childcare but HMRC were unable to confirm their eligibility due to an outstanding application for Carer Support Payment. This is to ensure consistency with how Carer's Allowance claimants are treated.

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[10].

9. Consolidation

9.1 Consolidation is not required.

10. Consultation outcome

10.1 As amendments in this Order are consequential, a formal consultation on the draft Order was not considered necessary.

10.2 A public consultation on the Scottish Government's proposals regarding Carer Support Payment (formerly Scottish Carer's Assistance) was undertaken between 28th February 2022 and 25th May 2022.

11. Guidance

11.1 Operational guidance will be provided for DWP and Department for Communities (Northern Ireland) staff.

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 A full Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

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

14. Monitoring & review

14.1 No formal approach to monitoring or review is considered necessary. These amendments will be considered again should Carer Support Payment change in the future.

[10] 2020, c. 1, https://www.legislation.gov.uk/en/ukpga/2020/1/part/3

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Secretary of State for Scotland, Alister Jack, has made the following statement:

"There is no need for review or monitoring as the Order does not regulate businesses."

15. Contact

15.1 Alice Edmonston at the Office of the Secretary of State for Scotland (email: alice.edmonston1@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alister Jack, the Secretary of State for Scotland, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.