POLICY NOTE

THE CARER'S ASSISTANCE (CARER SUPPORT PAYMENT) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 28(2) and 95 of the Social Security (Scotland) Act 2018[1]. The instrument is subject to *affirmative procedure*.

This instrument sets out provisions for amendments to The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023[2] ('the principal regulations') and The Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023[3]. The principal regulations set out the eligibility criteria for Carer Support Payment which is a form of assistance for people who provide regular and substantial care to someone who is in receipt of a qualifying disability benefit.

The instrument amends provision in the principal regulations on the initial period for applications, extending availability of the benefit to further local authority areas in a phased approach, to be available across Scotland by November 2024. It also brings forward the commencement date of existing provisions to extend eligibility to a specific group of students in full-time non-advanced education. It also makes a number of other amendments to the principal regulations.

1. Policy Objectives

The principal regulations for Carer Support Payment came into force on 19 November 2023, making the benefit available for those making new applications in Dundee City, Perth and Kinross and Na h-Eileanan Siar (the Western Isles). The principal regulations also provided for a 'case transfer' process which automatically transfers the benefits of Carer's Allowance clients, from the Department for Work and Pensions (DWP) to Carer Support Payment administered by Social Security Scotland. This process began in February 2024. The 'case transfer' process is not limited to the areas in which new applications can be made and is taking place across Scotland.

These amendment regulations include provisions for the phased roll out of Carer Support Payment to further local authorities, including specific backdating provisions as part of this, and to bring forward the commencement date of existing provisions to extend eligibility to a specific group of students in full-time non-advanced education. They also make a number of other amendments to the principal regulations. Further information on each of these areas is provided below.

[1] https://www.legislation.gov.uk/asp/2018/9/contents/enacted
[2] https://www.legislation.gov.uk/ssi/2023/302/contents/made
[3] https://www.legislation.gov.uk/ssi/2023/258/made

2. Provisions for the phased rollout of Carer Support Payment

The principal regulations provide for an initial period for applications to take place before the full roll out of Carer Support Payment. Carer Support Payment will be rolled out in phases until 04 November 2024, when the benefit will become available nationally, across Scotland. Extending the pilot in phases to additional local authority areas will support a safe and secure delivery of the benefit, in recognition of its complex links with a range of other support.

This instrument provides for Carer Support Payment to be made available for those making new applications in the following local authority areas from the following dates:

- Angus, North Lanarkshire and South Lanarkshire on 24 June 2024,
- Aberdeen City, Aberdeenshire, East Ayrshire, Fife, Moray, North Ayrshire and South Ayrshire on 19 August 2024
- all 19 remaining local authority areas in Scotland on 04 November 2024

Additional 'backdating' provisions to support the roll out of Carer Support Payment

To support the roll out, the instrument introduces additional provisions around 'backdating' – allowing carers to receive payments of Carer Support Payment for periods before the date they make their application. These additional provisions are intended to ensure that carers are not disadvantaged by living in a local authority outside of the initial pilot areas for Carer Support Payment. They are required because Carer Support Payment eligibility criteria are different in some key areas from eligibility criteria for Carer's Allowance, the benefit it is replacing. This means some carers will not be eligible for support until Carer Support Payment is available in their area. The provisions mean that these carers will be able to backdate their applications to the first point at which they would have become eligible for Carer Support Payment had they lived in the first pilot area, where they were:

- unable to apply for Carer's Allowance as they were in full-time education, but would have been eligible under the full-time education rules for Carer Support Payment
- unable to apply for Carer's Allowance as they did not meet rules around 'past presence' which apply in Carer's Allowance, but would have been eligible under the 'past presence' rules which apply in Carer Support Payment (including exemptions from meeting the test where the person they care for has been exempted from meeting the test, and where they, or the person they care for is terminally ill).

These amendment regulations provide that these carers will be able to backdate applications as far as 19 November 2023 if they apply within 13 weeks of the benefit being available in their local authority area, or later if they have a good reason for not applying within the 13 weeks. This is because 19 November is the first date at which Carer Support Payment became available in Scotland, in the 'Phase 1' pilot area. Allowing backdating to this date puts individuals in the subsequent pilot areas on an even footing with the first pilot area, and means they will be entitled to the same amount of assistance, regardless of where they live in Scotland. Backdating under these special rules will be possible only if carers also fulfil the other Carer Support Payment eligibility criteria. Where the carer does not meet all other eligibility criteria on their chosen start date, the amendments provide that Carer Support Payment can be awarded from the first point after this that they met all of the eligibility criteria.

3. Commencement of provision to extend eligibility to a further group of full-time students

The principal regulations set out the rules for when carers may be eligible for Carer Support Payment while in full-time education. Eligibility rules are different from Carer's Allowance and provide that carers may be eligible for Carer Support Payment where they are aged 16 to 19 in full-time advanced education or aged 20 or over in full-time education at any level.

In addition to this, the principal regulations provide at regulations 13(2) and (3) for a further group of carers, aged 16 to 19 in full-time non-advanced education, to be eligible in certain exceptional circumstances. These are students who are:

- without parental support
- responsible for a child or qualifying young person
- in receipt of certain disability benefits and assessed or treated as having a limited capability for work
- in a couple and their partner is not a student, or a student to whom any of the exceptional circumstances apply.

The expansion of eligibility to this group of carers is in recognition of the fact that they would not have access to support from parents or guardians in the same way as other carers aged 16 to 19 in full-time non-advanced education.

These amendment regulations bring forward the commencement date for regulations 13(2) and (3) of the principal regulations from 01 October 2024 to 23 June 2024 – so that carers can benefit from this change sooner as part of the national roll out of the benefit.

Additional 'backdating' provisions for full-time students with exceptional circumstances

As the amendment regulations will expand eligibility for Carer Support Payment to a further group of students from 23 June 2024, they also include specific backdating provision for this group to prevent any disadvantage for carers living in local authority areas in which the benefit is released later.

Carers in this group of students will be able to backdate as far as 23 June 2024 if they fulfil other eligibility requirements for backdating, as this is the first point at which they would have been eligible for Carer Support Payment regardless of where they live in Scotland. Carers in this group will be able to backdate their application to 23 June 2024 where they apply within 13 weeks of the benefit being available in their local authority area (or within 13 weeks of 23 June 2024 where resident in the initial pilot areas) and fulfil all other eligibility requirements.

Further minor amendments

The regulations also make a number of further small or minor amendments to the principal regulations, for clarity and to provide greater consistency with Carer's Allowance and the devolved disability benefits. The regulations also amend the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 as set out below.

Eligibility for Carer Support Payment while in legal detention

This instrument will amend regulations 5 and 40 of the principal Carer Support Payment regulations to provide that where a carer is in legal detention, this may be treated as a temporary break in care where it meets the criteria. This would have the effect of allowing payment to continue for up to four weeks where a carer is temporarily detained, and for the award to be reinstated without application in situations where the carer becomes entitled again within 26 weeks of an award which is ended due to temporary legal detention. This is intended to provide greater consistency with Carer's Allowance, where awards may be suspended where a carer is detained pending the outcome of criminal proceedings, as well as providing greater stability in support for the carer, particularly in situations where they are detained for a short period, or detained and not charged.

Effective date of a determination without application following a previous determination made in error

This instrument will amend regulations 27 and 28 of the principal Carer Support Payment regulations regarding the effective date of a determination following a previous determination made in error. Amendments will provide that where it is identified that a determination of entitlement to Carer Support Payment has been made in error, the date the new determination should take effect will be the first day of the award week in which the earlier determination took effect. This replaces the incorrect determination with the correct determination. This provides consistency with the regulations for the disability benefits, Child and Adult Disability Payment, and will ensure carers receive the correct amount of support where it is identified an earlier determination has been made in error.

Drafting updates to the earnings schedule

This instrument will amend a number of paragraphs within schedule 2 of the principal regulations, which provides the detail of how earnings are calculated for assessing entitlement to Carer Support Payment. Two of the amendments fix a formatting issue with formulae used for the calculation of some types of earnings. The remaining amendments update drafting and some references for clarity and have no impact on how the benefit will be administered.

Changes to transitional provisions regarding the right to apply for Carer's Allowance

This instrument will also amend the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 to update the extinguishment of the right to apply for Carer's Allowance in additional local authority areas, and across Scotland, in line with the national roll out. This will 'switch off' carers' ability to apply for Carer's Allowance as Carer Support Payment becomes available in their area.

4. 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).

An analysis of the responses to the consultation was published on 08 November 2022. A summary report from the research with experience panel members was published on 09 November 2022, prior to the publication of the full Scottish Government response to the public consultation on 24 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' (now amended to 'temporary stops in entitlement') 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 change education rules, which was largely implemented through the principal Carer Support Payment regulations. These amendment regulations bring forward the commencement date for extension of support to a further group of students, to June 2024.

5. Scottish Commission on Social Security - scrutiny of the amendment regulations

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on the draft Carer Support Payment Amendment Regulations. On 19 February 2024, the Scottish Government provided SCoSS with the draft regulations and an accompanying policy note. The Scottish Government considered 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. SCoSS published its scrutiny report on 22 March 2024, making three recommendations and three observations in relation to the draft regulations. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.

6. Impact Assessments

A series of impact assessments were published at the same time as the principal Carer Support Payment regulations. These included an Equalities Impact Assessment, Island

Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Business and Regulatory Impact Assessment, Data Protection Impact Assessment and a Children's Rights and Wellbeing Impact Assessment, which were developed alongside Carer Support Payment policy at launch. These are 'live' working documents in that we are continuing to work to improve the data and information we have on carers and others who may be affected by Carer Support Payment policy and services, and continue to use this to consider how we may improve our service. This includes direct research such as that undertaken by Experience Panels and consideration of stakeholder and other research, and will include Client Surveys in future. We continue to hold annual equalities sessions with our Carer Benefits Advisory Group as part of our work to address the gaps in data and understanding identified by these impact assessments.

At the same time we are also working on finalising evaluation plans for both Carer Support Payment new claims and case transfer from Carer's Allowance, which will bring together a range of data, including bespoke research, to help us to consider the impacts of Carer Support Payment.

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. Black and minority ethnic 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 for the principal Carer Support Payment regulations that 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.

In developing these amendment regulations we considered whether there may be any particular groups who would be disadvantaged by the timing and structure of the roll out provided for by the regulations, in terms of being disproportionately represented in areas which were included in later phases. The nature of the eligibility criteria for Carer Support Payment means it is challenging to estimate the number of carers in any given area of Scotland who may be eligible for the benefit, so we considered current Carer's Allowance recipients in the various areas as the best indicator of future Carer Support Payment applications. This data is unfortunately limited and in terms of protected characteristics provides only age and gender information.

Overall, the proportions of carers in by age group and by gender in each phase were similar to the proportion of carers in by age group and gender across Scotland overall. However, consideration of this data found that the current Carer's Allowance recipients in-payment caseload over State Pension age are marginally more likely to be living in the final phase of the roll out – once the benefit becomes available nationally. However, carers over State Pension age are less likely to be affected by the changes in eligibility for Carer Support Payment – particularly those around full-time education and 'past presence' – and are much more likely to have only 'underlying entitlement' to support rather than to receive payments. As such we do not expect the design of the roll out to have any significant impact on carers of State Pension age as we would anticipate they would be able to apply for Carer's Allowance and wait for their benefit or underlying entitlement to be transferred.

We also considered that carers who would be eligible for Carer Support Payment but not Carer's Allowance – some groups of full-time students and people with access to public funds who have recently moved, or moved back, to Scotland – may be disadvantaged by the roll out

where they are living in the areas in later phases of this, as they may be unable to apply when they first become eligible for the benefit.

We would expect this would affect full-time students eligible under Carer Support Payment rules in particular. Data is limited on the volume and characteristics of carers expected to be affected by changes in rules around 'past presence', though this is anticipated to be much lower numbers than those affected by student changes. Our assessment of the impact of the changes we have made to the rules in Carer Support Payment around full-time education is that an estimated additional 1,500 people are expected to be able to access support. This would mean that around 53% of this group would be expected to be living in areas in phase 4 of the roll out. Actual numbers may be higher than this, taking into account that students are likely to be disproportionately represented in large centres like Edinburgh and Glasgow.

The special backdating provisions in the amendment regulations are, therefore, designed to mitigate potential negative effects of the roll out by ensuring carers living in areas in phase 2 of the roll out and beyond are able to access all of the support they would have been entitled to had they been able to apply from day one of the pilot.

The extension of eligibility to a further group of carers aged 16 to 19 in full-time non-advanced education with certain circumstances was provided for in the principal Carer Support Payment regulations and considered in the detailed impact assessments which accompanied those regulations. The amendment regulations bring forward commencement of these provisions and provide special backdating rules for carers affected by the change. This will allow carers to access support sooner and support them to access all of the support they are entitled to. However, for these and the wider backdating changes, it will be important to ensure clear information, advice and guidance is available to help carers understand their rights, taking into account the different communication needs of different groups of carers.

No data is available on the number or characteristics of carers who may be affected by the change to the rules on when Carer Support Payment may be paid to carers in legal detention, however our understanding from engagement with the DWP in relation to Carer's Allowance is that this change would affect only very small numbers. The change is also intended to ensure carers in Scotland receiving Carer Support Payment are not disadvantaged compared to those receiving Carer's Allowance, who may be able to receive payments in respect of periods spent in legal detention in some circumstances.

Updates to rules around setting effective dates where a determination has been made in error are not anticipated to disproportionately affect any particular group of carers. These would apply in any situation where a determination has been made in error and needs to be corrected, and is intended to ensure carers receive the correct amount of support. Where this leads to a requirement to recover any overpayment, this would be done in line with our overall approach to receive which takes into account individual circumstances.

Other changes being made through the regulations are changes to drafting or referencing with no practical effect on carers or others using the benefit or services.

Overall, therefore there are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations. Our consideration of these, however, did highlight the importance of:

- commencing the provisions for full-time students with exceptional circumstances as soon as practicable,
- making backdating provisions for those not within the initial pilot areas,
- communicating the roll out approach as clearly as possible, and

- ensuring equitable access to support for eligible carers.

7. EU alignment considerations

This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

8. Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed for the principal regulations and covers consideration of the impact of Carer Support Payment on the competitiveness of Scottish companies and the third sector within Scotland, the UK, and elsewhere in Europe and the rest of the world, and on local authorities and health boards, and on the Legal Aid budget.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish Gross Domestic Product (GDP), devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other "fiscal factors", defined as "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000".

The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a "non-negligible impact on receipts or expenditure".

Having considered the measures in these regulations, the SFC has decided not to produce forecasts for these on the basis that these measured are not expected to materially change the SFC's forecast for Carer Support Payment (CSP) from that published on 19 December 2023. If applicable, the SFC will reflect any changes in spending due to these regulations in their next forecast.

Scottish Government,
Social Security Directorate,
29 April 2024