



Social Security (Scotland) Act 2018

2018 asp 9

PART 3 **S**

SUPPLEMENTING ASSISTANCE UNDER OTHER ENACTMENTS

Top up of reserved benefits

79 Power to provide for top up **S**

- (1) The Scottish Ministers may by regulations provide for financial assistance to be given to an individual who—
 - (a) is entitled to a reserved benefit, and
 - (b) appears to the Scottish Ministers to require financial assistance (in addition to any amount the individual receives by way of reserved benefit) for the purpose, or one of the purposes, for which the benefit is being provided.
- (2) The power conferred by subsection (1) includes the power to make provision about—
 - (a) determining entitlement (including specifying further eligibility rules that are to be used to determine whether an individual is entitled to the assistance),
 - (b) the amount of assistance,
 - (c) applications for assistance,
 - (d) obtaining information,
 - (e) appeals,
 - (f) assistance given in error,
 - [^{F1}(g) offences.]
- (3) In this section and section 80, “reserved benefit” means a benefit which is to any extent a reserved matter within the meaning of schedule 5 of the Scotland Act 1998.

Textual Amendments

- F1** S. 79(2)(g) inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. 4(2), 18(1)

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Commencement Information

I1 S. 79 in force at 1.5.2020 by [S.S.I. 2020/127](#), [reg. 2\(1\)\(a\)](#)

80 Restrictions on power **S**

- (1) Regulations under section 79 may not provide for financial assistance to be given to meet or help to meet housing costs.
- (2) Regulations under section 79 may not provide for financial assistance to be given where the need for the assistance arises solely from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit).
- (3) But subsection (2) does not prevent assistance from being given where the need for the assistance in question—
 - (a) also arises from some exceptional event or exceptional circumstances, and
 - (b) is immediate.
- [^{F2}(4) The maximum penalty that may be provided for in regulations under section 79 in respect of an offence under those regulations is—
 - (a) on summary conviction—
 - (i) imprisonment for a term not exceeding 12 months,
 - (ii) a fine not exceeding the statutory maximum, or
 - (iii) both,
 - (b) on conviction on indictment—
 - (i) imprisonment for a term not exceeding 5 years,
 - (ii) a fine, or
 - (iii) both.]

Textual Amendments

F2 S. 80(4) inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 4\(3\)](#), [18\(1\)](#)

Commencement Information

I2 S. 80 in force at 1.5.2020 by [S.S.I. 2020/127](#), [reg. 2\(1\)\(b\)](#)

[^{F3}80A Default provision in respect of offences **S**

- (1) Sections 71 to 73 (which establish offences) apply in connection with financial assistance given by virtue of top-up assistance regulations as they apply in connection with assistance given under section 24.
- (2) But subsection (1) is subject to any contrary provision in top-up assistance regulations.
- (3) Where they apply by virtue of subsection (1), sections 71 to 73 apply subject to the following modifications—
 - (a) a reference to assistance is to be read as a reference to financial assistance provided for by top-up assistance regulations,

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- (b) a reference to giving notice in accordance with section 56 is to be read as a reference to giving notice in accordance with top-up assistance regulations,
 - (c) sections 72(3) and 73(3) do not apply unless, in accordance with top-up assistance regulations, the Scottish Ministers have informed the person in question about the way in which notification of a change of circumstances is to be given.
- (4) For the avoidance of doubt, the reference in section 74 to an offence under this Act or any regulations made under it includes—
- (a) an offence under any of sections 71 to 73 as applied by virtue of subsection (1),
 - (b) an offence under top-up assistance regulations.
- (5) In this section, “top-up assistance regulations” means regulations under section 79.]

Textual Amendments

- F3** S. 80A inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), ss. 4(4), 18(1)

Carer's allowance: temporary provision

81 Carer's allowance supplement **S**

- (1) The Scottish Ministers must make a payment (a “carer's allowance supplement”) to qualifying individuals in respect of each of the following periods of each financial year—

- (a) 1 April to 30 September, and
- (b) 1 October to 31 March.

[^{F4}(1A) A qualifying individual is an individual to whom subsection (2) or (2A) applies.]

- (2) [^{F5}This subsection applies to] an individual who, on the qualifying date, was—
- (a) in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992, and
 - (b) resident in Scotland.

[^{F6}(2A) This subsection applies to an individual whom the Scottish Ministers have determined in accordance with Part 2 of the Carer's Allowance Supplement and Young Carers Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 ([S.S.I. 2020/475](#))—

- (a) met the eligibility conditions in subsection (9) on the qualifying date (where the qualifying date is before IP completion day),
- (b) met the eligibility conditions in subsection (11) on the qualifying date (where the qualifying date is after IP completion day and the individual has rights arising from a relevant EU regulation), or
- (c) met the eligibility conditions in subsection (13) on the qualifying date (where the qualifying date is after IP completion day and the individual has rights arising from the UK-Ireland convention mentioned in that subsection).]

- (3) The qualifying date is a date determined by the Scottish Ministers falling within the period to which the payment relates.

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- (4) The amount of a carer's allowance supplement is to be calculated according to the following formula [^{F7}(but see also subsection (4A))][—]

$$(JSA - CA) \times 26$$

where—

JSA is whichever is the higher of—

- (a) the weekly amount specified in regulation 79(1)(c) of the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) as it has effect on the qualifying date, and
- (b) that amount as it would have effect on the qualifying date if it were adjusted for inflation in accordance with subsection (5), and

CA is the weekly rate of carer's allowance specified in Part 3 of schedule 4 of the Social Security Contributions and Benefits Act 1992 as it has effect in Scotland on the qualifying date.

- [^{F8}(4A) The amount of a carer's allowance supplement in respect of the period of 1 April 2020 to 30 September 2020 is £230.10 greater than that calculated according to the formula in subsection (4).]

- (5) The Scottish Ministers must, before the start of each new tax year, beginning with the first new tax year beginning after this section comes into force—
 - (a) calculate what the weekly amount specified in regulation 79(1)(c) of the Jobseeker's Allowance Regulations 1996 (“the JSA Regulations”) would be if it were adjusted for inflation,
 - (b) publish a statement explaining how they have calculated inflation for this purpose.
- (6) In calculating the amount for the purpose of subsection (5)(a), the Scottish Ministers may take account of any change in the weekly amount specified in regulation 79(1)(c) of the JSA Regulations since this section came into force.
- (7) For the purposes of subsection (5), a tax year means a period beginning with 6 April in one year and ending with 5 April in the next.
- (8) The Scottish Ministers may by regulations modify this section so as to modify who is a qualifying individual for the purposes of this section.

- [^{F9}(9) An individual met the eligibility conditions referred to in subsection (2A)(a) on a given date if, on that date, the individual—

- (a) was in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992,
- (b) was an individual—
 - (i) to whom a relevant EU Regulation applied, and
 - (ii) in respect of whom the United Kingdom was competent for payment of sickness benefits in cash for the purposes of Chapter 1 of Title III of the Regulation in question,
- (c) was resident in—
 - (i) Switzerland, or
 - (ii) an EEA State other than the United Kingdom, and
- (d) had a genuine and sufficient link to Scotland.

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- (10) The reference in subsection (9)(d) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to the carer's allowance supplement this section—
- (a) would be incompatible with EU law, or
 - (b) would have been incompatible with EU law immediately before IP completion day.
- (11) An individual met the eligibility conditions referred to in subsection (2A)(b) on a given date if, on that date, the individual—
- (a) was in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992,
 - (b) was an individual—
 - (i) to whom the rules set out in a relevant EU regulation applied by virtue of—
 - (A) Title III of Part 2 of the EU withdrawal agreement,
 - (B) Part 3 or Article 23(4) of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020),
 - (C) Title III of the EEA EFTA separation agreement (as defined in that section), or
 - (D) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974 (S.I. 1974/555) between the United Kingdom and Gibraltar, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
 - (c) was resident in—
 - (i) Switzerland,
 - (ii) an EEA State, or
 - (iii) Gibraltar, and
 - (d) had a genuine and sufficient link to Scotland.
- (12) The reference in paragraph (d) of subsection (11) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to the carer's allowance supplement this section would be incompatible with the applicable agreement mentioned in paragraph (b)(i) of that subsection.
- (13) An individual met the eligibility conditions referred to in subsection (2A)(c) on a given date if, on that date, the individual—
- (a) was in receipt of a carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992,
 - (b) was an individual—
 - (i) to whom the convention on social security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019, as modified from time to time in accordance with any provision of it, applied, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits,
 - (c) was resident in Ireland, and

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- (d) had a genuine and sufficient link to Scotland.
- (14) The reference in paragraph (d) of subsection (13) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to the carer’s allowance supplement, this section would be incompatible with the convention mentioned in paragraph (b) of that subsection.
- (15) In this section—
- “EEA State” means—
- (a) a member State of the European Union, or
 - (b) any other State that is a party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time, “EU law” has the meaning given by subsection (9) of section 126 of the Scotland Act 1998, or if that subsection has been repealed, the meaning given by that subsection immediately before its repeal,
- “relevant EU Regulation” means—
- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
 - (ii) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, or
 - (b) in relation to an individual to whom the exchange of letters mentioned in subsection (11)(b)(i)(D) applies, a Regulation mentioned in paragraph (a) as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018.]

Textual Amendments

- F4** S. 81(1A) inserted (24.12.2020) by The Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 (S.S.I. 2020/475), reg. 1, **sch. 1 para. 2**
- F5** Words in s. 81(2) substituted (24.12.2020) by The Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 (S.S.I. 2020/475), reg. 1, **sch. 1 para. 3**
- F6** S. 81(2A) inserted (24.12.2020) by The Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 (S.S.I. 2020/475), reg. 1, **sch. 1 para. 4**
- F7** Words in s. 81(4) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 6(2)(a)** (with s. 9) (which affecting provision expires (30.9.2021 at the end of the day) by Coronavirus (Extension and Expiry) (Scotland) Act 2021 (asp 19), **ss. 2(8)(b), 11(2)**)
- F8** S. 81(4A) inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 6(2)(b)** (with s. 9) (which affecting provision expires (30.9.2021 at the end of the day) by Coronavirus (Extension and Expiry) (Scotland) Act 2021 (asp 19), **ss. 2(8)(b), 11(2)**)
- F9** S. 81(9)-(15) inserted (24.12.2020) by The Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 (S.S.I. 2020/475), reg. 1, **sch. 1 para. 5**

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Commencement Information

I3 S. 81 in force at 3.9.2018 by [S.S.I. 2018/250](#), **reg. 2(1)** (with [reg. 3](#))

82 Power to repeal temporary provision **S**

The Scottish Ministers may by regulations—

- (a) repeal section 81 and revoke any regulations made under it, and
- (b) repeal this section.

Commencement Information

I4 S. 82 in force at 3.9.2018 by [S.S.I. 2018/250](#), **reg. 2(1)** (with [reg. 3](#))

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