
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“qualifying date” means a date determined by the Scottish Ministers in accordance with section 81(3) of the 2018 Act,

“the 2018 Act” means the Social Security (Scotland) Act 2018.

PART 2

Carer's allowance supplement for individuals resident outside Scotland

Amendment of the Social Security (Scotland) Act 2018

3. Section 81 of the 2018 Act is modified in accordance with schedule 1.

Meaning of determination of entitlement to a carer's allowance supplement

4.—(1) References in these Regulations to a determination of an individual's entitlement to a carer's allowance supplement for the purposes of section 81(2A)(1) of the 2018 Act are references to a determination made—

(a) by the Scottish Ministers—

(i) under regulation 5, or

(ii) (following a request for a re-determination) under paragraph 6 of schedule 2 of these Regulations,

(b) by the First-tier Tribunal for Scotland—

(1) Section 81(2A) is inserted by schedule 1 of these Regulations.

- (i) under paragraph 12 of schedule 2 of these Regulations in an appeal against a determination made by the Scottish Ministers, or
 - (ii) (subsequent to such an appeal) under its Tribunals Act powers,
 - (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or a review of, a decision of the First-tier Tribunal),
 - (d) by the Court of Session under its Tribunals Act powers (in an appeal against a decision of the Upper Tribunal), or
 - (e) by the Supreme Court of the United Kingdom—
 - (i) in an appeal under section 40 of the Court of Session Act 1988⁽²⁾ against a decision of the Court of Session, or
 - (ii) on a reference made by the Court of Session under schedule 6 of the Scotland Act 1998.
- (2) In this regulation—
- “determination” means—
- (a) a decision about whether the individual meets the conditions in section 81(9), (11) or (13) of the 2018 Act,
 - (b) if those conditions are satisfied, a decision about what assistance by way of carer's allowance supplement the individual is entitled to be given,
 - (c) a decision about whether the individual's application for a carer's allowance supplement is possibly premature,
- “Tribunals Act powers” means the powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014⁽³⁾.

Determination of entitlement to a carer's allowance supplement for individuals resident outside Scotland

5.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to a carer's allowance supplement for the purposes of section 81(2A) of the 2018 Act—

- (a) on receiving an application from the individual, or
- (b) when required to do so by regulation 7, 8 or 9, without receiving an application.

(2) A determination may be made under paragraph (1) in respect of any qualifying date before or after the coming into force of these Regulations.

(3) Paragraph (4) applies where there is a subsequent determination of an individual's entitlement to a carer's allowance supplement in respect of a qualifying date.

(4) Where this paragraph applies—

- (a) the latest determination supersedes any earlier determination insofar as it deals with the individual's entitlement to a carer's allowance supplement in respect of the same qualifying date, and
- (b) the individual is not entitled, and is not to become entitled, to a carer's allowance supplement in respect of that qualifying date by the earlier determination.

⁽²⁾ 1988 c.36. Section 40 was substituted by section 117 of the Courts Reform (Scotland) Act 2014 (asp 8).

⁽³⁾ 2014 asp 10.

Timing of applications for a determination of entitlement to a carer's allowance supplement for individuals resident outside Scotland

6. For the purposes of regulation 5, an individual may make an application on, or at any time after, the first qualifying date on which an individual considers themselves to have been a person to whom section 81(2A) of the 2018 Act applies.

Determination of entitlement to a carer's allowance supplement without application for individuals resident outside Scotland

7. The Scottish Ministers are to make a determination of an individual's entitlement to a carer's allowance supplement under regulation 5, without receiving an application, where—

- (a) it appears to the Scottish Ministers from information available to them that the individual is likely to meet the conditions in section 81(9) or (as the case may be) section 81(11) or (13) of the 2018 Act in respect of one or more qualifying dates,
- (b) the Scottish Ministers have previously made a determination that an individual does not meet the conditions in section 81(9) or (as the case may be) section 81(11) or (13) of the 2018 Act in respect of a qualifying date (“the original determination”), and—
 - (i) the Scottish Ministers establish that the individual has received an award of carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992(4),
 - (ii) the award referred to in sub-paragraph (i) is backdated to include the relevant qualifying date, and
 - (iii) it appears to the Scottish Ministers that, had the backdated award been made before the original determination, it is likely that a determination that the individual met the conditions in section 81(9) or (as the case may be) section 81(11) or (13) of the 2018 Act would have been made instead,
- (c) the individual received a payment of carer's allowance supplement in respect of the most recent qualifying date pursuant to a determination made by the Scottish Ministers under regulation 5.

Determination following official error - underpayments

8.—(1) The Scottish Ministers are to make a determination under regulation 5 without receiving an application where—

- (a) they have previously made a determination under regulation 5 of the individual's entitlement to a carer's allowance supplement, and
- (b) they establish that due to an official error that determination was incorrect resulting in the individual not being paid a carer's allowance supplement to which they were entitled.

(2) In this regulation, “official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone not so acting.

Determination following error – overpayments

9.—(1) The Scottish Ministers are to make a determination under regulation 5 without receiving an application where—

- (a) they have previously made a determination under regulation 5 of the individual's entitlement to a carer's allowance supplement, and

(4) 1992 c.4. Section 70 was relevantly amended by S.I. 2002/1457.

- (b) they establish that due to an error that determination was incorrect resulting in the individual being paid a carer's allowance supplement to which they were not entitled.
- (2) In this regulation, "error" means an error in the performance of a function conferred by these Regulations which leads to a determination being made—
 - (a) wrongly, or
 - (b) correctly but on the basis of incorrect information.

Procedure

10. Schedule 2 makes further provision about matters of procedure for applying for, and determining entitlement to, a carer's allowance supplement for the purposes of section 81(2A) of the 2018 Act.

PART 3

Young carer grants

Amendment of eligibility conditions

11.—(1) The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019⁽⁵⁾ are amended in accordance with paragraphs (2) to (5).

(2) In regulation 4 (making of applications)—

(a) for paragraph (3), substitute—

“(3) An application is to be treated as made—

- (a) in a case where paragraph (7) applies, on the day after the end of the 13 week period to which the application relates,
- (b) in any other case, on the day it is received by the Scottish Ministers.”.

(b) after paragraph (6), insert—

“(7) This paragraph applies where—

- (a) an application for a young carer grant is made on or after the day on which the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020⁽⁶⁾ came into force,
- (b) the application relates to a period of 13 weeks beginning after 21 October 2019 and ending before the day mentioned in sub-paragraph (a), and
- (c) it appears to the Scottish Ministers that the applicant would be likely to have been entitled to a young carer grant on making an application on the day after the end of that 13 week period were it not for the requirement in regulation 8(3)(a) of these Regulations to have previously been properly paid a young carer grant, as it had effect immediately before the date on which the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 came into force.”.

(3) In regulation 7 (further eligibility conditions)—

(a) for paragraph (3), substitute—

⁽⁵⁾ S.S.I. 2019/324, to which there are no amendments relevant to these Regulations.

⁽⁶⁾ S.S.I. 2020/xxx.

- “(3) An applicant is not entitled to a young carer grant if they have previously received a young carer grant, unless—
- (a) the day their application is made is at least one year after the day of the application in respect of which that grant was paid, or
 - (b) in a case where regulation 4(7) applies, the day their application is made is at least one year either before or after the application in respect of which the grant was paid.”
- (b) for paragraph (4), substitute—
- “(4) Paragraph (5) applies if—
- (a) any other person has been paid a young carer grant in respect of care of any of the persons being cared for in an application for a young carer grant, and
 - (b) either—
 - (i) that grant was paid as a result of an application made during the year immediately preceding the day the applicant makes his or her application, or
 - (ii) in a case where regulation 4(7) applies, that grant was paid as a result of an application made during the year immediately preceding or following the day the applicant makes his or her application.”
- (c) after paragraph (6), insert—
- “(7) In paragraph (5)(a), in a case where regulation 4(7) applies, the reference to the other person who was paid a young carer grant having died is to be read as a reference to that other person having died before the day on which the applicant’s application was made.”
- (4) In regulation 8 (conditions relating to residence)—
- (a) for paragraph (3) substitute—

“(3) An applicant who is not ordinarily resident in the United Kingdom does not have to meet the condition in paragraph (1)(b) (and therefore is entitled to a young carer grant) if—

 - (a) they satisfy the conditions in paragraph (4) on the day on which the application is made, if the application is made before IP completion day,
 - (b) they satisfy the conditions in paragraph (5) on the day the application is made, if the application is made after IP completion day and the individual has rights arising from a relevant EU regulation, or
 - (c) they satisfy the conditions in paragraph (6) on the day the application is made, if the application is made after IP completion day and the individual has rights arising from the UK-Ireland convention mentioned in that paragraph.
 - (4) The conditions referred to in paragraph (3)(a) are that the applicant must—
 - (a) be an individual—
 - (i) to whom a relevant EU Regulation applies, and
 - (ii) in respect of whom the United Kingdom is competent for payment of sickness benefits in cash for the purposes of Chapter 1 of Title III of the Regulation in question,
 - (b) be resident in—
 - (i) Switzerland, or
 - (ii) an EEA State other than the United Kingdom,

- (c) have a genuine and sufficient link to Scotland, and
 - (d) meet the other conditions prescribed in these Regulations.
- (5) The conditions referred to in paragraph (3)(b) are that the applicant must—
- (a) be an individual—
 - (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) 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(7)),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in that section), or
 - (dd) 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(8), and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
 - (b) be resident in—
 - (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar,
 - (c) have a genuine and sufficient link to Scotland, and
 - (d) meet the other conditions prescribed in these Regulations.
- (6) The conditions referred to in paragraph (3)(c) are that the applicant must—
- (a) be 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(9), as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits,
 - (b) be resident in Ireland,
 - (c) have a genuine and sufficient link to Scotland, and
 - (d) meet the other conditions prescribed in these Regulations.
- (7) The reference in paragraph (4)(c) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to a young carer grant paragraph (4)—
- (a) would be incompatible with EU law, or
 - (b) would have been incompatible with EU law immediately preceding IP completion day.

(7) 2020 c.1.
 (8) S.I. 1974/555.
 (9) 2019 CP 49.

(8) The reference in paragraph (5)(c) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to a young carer grant, paragraph (5) would be incompatible with the applicable agreement referred to in that paragraph.

(9) The reference in paragraph (6)(c) to an individual's link to Scotland being sufficient is to its being sufficiently close that if the individual were not entitled to a young carer grant, paragraph (6) would be incompatible with the convention mentioned in that paragraph.

(10) In this regulation—

“EEA State” means—

- (a) any member state of the European Union or
- (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992⁽¹⁰⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽¹¹⁾, 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⁽¹²⁾ or, if that subsection has been repealed, the meaning given by that subsection immediately before its repeal⁽¹³⁾,

“relevant EU Regulation” means—

- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹⁴⁾ 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⁽¹⁵⁾ on the coordination of social security systems, or
- (b) in relation to an individual to whom the exchange of letters mentioned in paragraph (5)(a)(i)(dd) 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⁽¹⁶⁾.”

(5) In regulation 12 (amount and form of young carer grants)—

- (a) in paragraph (1), for “A young carer grant” substitute “Subject to paragraph (1A), a young carer grant”,
- (b) after paragraph (1) insert—

“(1A) Where the application for a young carer grant relates to a qualifying period which ended before the date on which the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 came into force, the amount of young carer grant to be given is the

⁽¹⁰⁾ Command Paper 2073 and OJ L 1, 3.1.1994, p.3.

⁽¹¹⁾ Command Paper 2183 and OJ L 1, 3.1.1994, p.572.

⁽¹²⁾ 1998 c.46, as amended by S.I. 2011/1043.

⁽¹³⁾ The repeal of section 126(9) of the Scotland Act 1998 is provided for by paragraph 19 of schedule 3 of the European Union (Withdrawal) Act 2018 (c.16). A date for the coming into force of that repeal is to be appointed by the Secretary of State.

⁽¹⁴⁾ OJ No. L 28, 30.1.1997, p.1.

⁽¹⁵⁾ OJ L 166, 30.4.2004, p.1.

⁽¹⁶⁾ 2018 c.16.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 No. 475

amount specified in paragraph (1) as it had effect on the day on which the application was made.”.

St Andrew's House,
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Date

Name
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