
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations extend provision of both Carer's Allowance Supplement ("CAS") and Young Carer Grants ("YCG"). In relation to YCG, these Regulations extend the circumstances in which a person may claim YCG from outside the UK. In relation to CAS, these Regulations provide for claims from outside the UK for the first time.

These Regulations seek to ensure that the rules on social security co-ordination provided for in Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004⁽²⁾ on the coordination of social security system are given full effect. This relates, in particular, to Article 19 of Regulation 1408/71 and Article 21 of Regulation 883/2004. These deal with claims made for cash sickness benefits by persons resident in a state other than the state which is competent for payment of such benefits to them. The power in section 2(2) of the European Communities Act 1972 is exercised for this purpose as regards regulations 4 and 5, as well as regulations 6, 7, 8, 9, 10 and schedule 2 other than paragraph 15, in so far as they are applied to determinations as to whether the conditions in new section 81(9) of the Social Security (Scotland) Act ("the 2018 Act") are met.

Regulation 11(4) inserts new paragraph (5) into regulation 8 of the Carer's Assistance (Young Carer Grant) (Scotland) Regulations 2019 ("the Young Carer Grants Regulations"), and paragraph 5 of schedule 1 of these Regulations inserts new subsection (11) into section 81 of the 2018 Act. These provisions look to ensure that the provision on social security co-ordination in Title III of Part 2 of the EU withdrawal agreement is given effect to, along with that in Part III of the EEA EFTA separation agreement, Part 3 of the Swiss citizens' rights agreement, and the exchange of letters between the Governments of the United Kingdom and Gibraltar on arrangements for social security co-ordination. The provision in regulation 11(4) where it inserts new paragraph (6) into regulation 8 of the Young Carer Grants Regulations, and paragraph 5 of schedule 1 where it inserts new subsection (13) into section 81 of the 2018 Act, ensures that the entitlement of those covered by the convention on social security between the UK and Ireland is also provided for.

In terms of CAS, the extension in provision is by amendment of section 81 of the 2018 Act relating to payment of CAS, along with provisions within Part 2 and schedule 2 of these Regulations. The amendments to the 2018 Act, found in schedule 1 of these Regulations, modify the definition of a "qualifying individual" so that persons resident out with Scotland, who would otherwise be entitled to receive CAS, may now be included within the definition where they satisfy the eligibility criteria. The addition of section 81(9), (11) and (13) to the 2018 Act details the eligibility criteria for such persons. The Scottish Ministers have a duty, in terms of regulations 5 to 9, to make a determination of an individual's entitlement to CAS, either on receiving an application or, when required by these Regulations, to make a determination without an application.

In terms of YCG, Part 3 of these Regulations makes amendments to the Young Carer Grants Regulations, so that persons who are not ordinarily resident in the United Kingdom may be entitled to a YCG if they satisfy the eligibility criteria detailed in regulation 8 (4) or as the case may be (5) or (6), as inserted by these Regulations into the Young Carer Grants Regulations. Provision is also made so that persons who have met the new criteria in regulation 8(4) may make an application to

(1) OJ No. L 28 30.1.1997 p.1.

(2) OJ L 166, 30.4.2004, p.1.

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*

receive a YCG for any 13 week period which falls within the period commencing with the day that the Young Carer Grants Regulations came into force, and ending with the day that these Regulations came into force. This is to allow for persons to now apply for the periods for which they would have been eligible for a YCG, had the benefit been capable of being claimed from outside the UK, on this basis, at the time the Young Carer Grant Regulations came into force. The Regulations enable applications for past periods of care to be made in any order, while maintaining the position for YCG claims from within Scotland that a carer may only receive one YCG in any 12 month period.

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, including challenging determinations.