
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 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—
 - (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—

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

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

- (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.

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
- (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.

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