

SCOTTISH STATUTORY INSTRUMENTS

**2019 No. 324**

**The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019**

**PART 2**

Eligibility

**Conditions relating to residence**

**8.—(1)** Subject to paragraphs (2) and (3), to qualify for a young carer grant the applicant must, on the day their application is made for that assistance, be—

- (a) habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, the European Economic Area or Switzerland, and
- (b) ordinarily resident in Scotland.

(2) Paragraph (1)(a) does not apply to the following persons (if they meet the condition in paragraph (1)(b) of being ordinarily resident in Scotland)—

- (a) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28 July 1951, as extended by article 1(2) of the Protocol relating to the status of refugees done at New York on 31 January 1967,

[<sup>F1</sup>(aa) a person who—

- (i) has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971, by virtue of—

- (ia) the Afghan Relocations and Assistance Policy, or
- (ib) previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),

- (ii) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i), or

- (iii) has leave granted under the Afghan Citizens Resettlement Scheme],

[<sup>F2</sup>(ab) a person who was residing in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971, <sup>F3</sup>...

- (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, [<sup>F4</sup>or]

[ does not require leave to enter or remain in the United Kingdom in accordance with <sup>F5</sup>(iii) section 3ZA of that Act,]]

[<sup>F6</sup>(ac) a person who was residing in Sudan before 15 April 2023, left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan and—

- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
  - (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
  - (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act]
- [<sup>F7</sup>(ad) a person in Great Britain who was residing in Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon immediately before 7 October 2023, left Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon in connection with the Hamas terrorist attack in Israel on 7 October 2023 or the violence which rapidly escalated in the region following the attack and—
- (i) has been granted leave in accordance with immigration rules made under section 3(2) of the Immigration Act 1971,
  - (ii) has a right of abode in the United Kingdom within the meaning given in section 2 of that Act, or
  - (iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,]
- (b) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971 <sup>M1</sup>, <sup>F8</sup> ...
- (c) a person who has humanitarian protection granted under the rules made under section 3(2) of the Immigration Act 1971, or
- (d) a person who—
- (i) is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 <sup>M2</sup>, and
  - (ii) is in the United Kingdom as a result of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.
- [<sup>F9</sup>(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),
      - (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, 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, 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.
- (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—

[<sup>F10</sup>“the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021];

“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, 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 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.]

#### Textual Amendments

- F1** Reg. 8(2)(aa) inserted (15.9.2021) by *The Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021* (S.S.I. 2021/320), regs. 1(1), **5(2)**
- F2** Reg. 8(2)(ab) inserted (22.3.2022 at 5.40 p.m.) by *The Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022* (S.S.I. 2022/108), regs. 1(1), **6(2)**
- F3** Word in reg. 8(2)(ab)(i) omitted (14.11.2022) by virtue of *The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022* (S.S.I. 2022/336), regs. 1(1), **7(a)**
- F4** Word in reg. 8(2)(ab)(ii) inserted (14.11.2022) by *The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022* (S.S.I. 2022/336), regs. 1(1), **7(b)**
- F5** Reg. 8(2)(ab)(iii) inserted (14.11.2022) by *The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022* (S.S.I. 2022/336), regs. 1(1), **7(c)**
- F6** Reg. 8(2)(ac) inserted (17.5.2023 at 5.54 p.m.) by *The Social Security (Residence Requirements) (Sudan) (Scotland) Regulations 2023* (S.S.I. 2023/149), regs. 1(1), **6(2)**
- F7** Reg. 8(2)(ad) inserted (26.10.2023 at 5.38 p.m.) by *The Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023* (S.S.I. 2023/309), regs. 1(2), **6(2)**
- F8** Words in reg. 8(2)(b) omitted (22.3.2022 at 5.40 p.m.) by virtue of *The Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022* (S.S.I. 2022/108), regs. 1(1), **6(3)**
- F9** Reg. 8(3)-(10) substituted for reg. 8(3) (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), regs. 1, **11(4)(a)**
- F10** Words in reg. 8(10) inserted (15.9.2021) by *The Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021* (S.S.I. 2021/320), regs. 1(1), **5(3)**

#### Commencement Information

- I1** Reg. 8 in force at 21.10.2019, see **reg. 1**

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**Changes to legislation:** *There are currently no known outstanding effects for the The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019, Section 8. (See end of Document for details)*

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**Marginal Citations**

**M1** 1971 c.77.

**M2** 1999 c.33.

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