

SCHEDULE 1

Regulation 3

Amendment of the Social Security (Scotland) Act 2018

1. Section 81 (carer's allowance supplement) of the Social Security (Scotland) Act 2018⁽¹⁾ is amended as follows.

2. After subsection (1) insert—

“(1A) A qualifying individual is an individual to whom subsection (2) or (2A) applies.”.

3. In subsection (2), for “A qualifying individual is” substitute “This subsection applies to”.

4. After subsection (2) insert—

“(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).”.

5. After subsection (8) insert—

“(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⁽²⁾,
- (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.

(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.

(1) [2018 asp 9](#). Section 81 applies with the modification made by Part 3 of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 ([asp 10](#)).

(2) [1992 c.4](#). Section 70 was relevantly amended by [S.I. 2002/1457](#).

Status: This is the original version (as it was originally made).

(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⁽³⁾),
 - (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⁽⁴⁾, 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
- (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

⁽³⁾ 2020 c.1.
⁽⁴⁾ 2019 CP 49.

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⁽⁵⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽⁶⁾, 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⁽⁷⁾, or if that subsection has been repealed, the meaning given by that subsection immediately before its repeal⁽⁸⁾,

“relevant EU Regulation” means—

- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971⁽⁹⁾ 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⁽¹⁰⁾ 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⁽¹¹⁾.”.

⁽⁵⁾ Command Paper 2073 and OJ L 1.3.1.1994, p.3.

⁽⁶⁾ Command Paper 2183 and OJ L 1.3.1.1994, p.572.

⁽⁷⁾ 1998 c.46, as amended by S.I. 2011/1043.

⁽⁸⁾ 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.

⁽⁹⁾ OJ No. L 28, 30.1.1997, p.1.

⁽¹⁰⁾ OJ L 166, 30.4.2004, p.1.

⁽¹¹⁾ 2018 c.16.