

## 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<sup>(1)</sup> 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<sup>(2)</sup>,
- (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<sup>(3)</sup>),
    - (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<sup>(4)</sup>, 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

---

<sup>(3)</sup> 2020 c.1.  
<sup>(4)</sup> 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<sup>(5)</sup>, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993<sup>(6)</sup>, 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<sup>(7)</sup>, or if that subsection has been repealed, the meaning given by that subsection immediately before its repeal<sup>(8)</sup>,

“relevant EU Regulation” means—

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

## SCHEDULE 2

Regulation 10

### Procedural Matters: Carer’s Allowance Supplement

## PART 1

### Application and determination of applications

#### Form of application

1.—(1) An application under regulation 5 must be—

- (a) made in such form, and
- (b) accompanied by such evidence as the Scottish Ministers require.

<sup>(5)</sup> Command Paper 2073 and OJ L 1.3.1.1994, p.3.

<sup>(6)</sup> Command Paper 2183 and OJ L 1.3.1.1994, p.572.

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

<sup>(8)</sup> 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.

<sup>(9)</sup> OJ No. L 28, 30.1.1997, p.1.

<sup>(10)</sup> OJ L 166, 30.4.2004, p.1.

<sup>(11)</sup> 2018 c.16.

*Status: This is the original version (as it was originally made).*

(2) The Scottish Ministers must publicise any requirements for the time being set under sub-paragraph (1).

(3) Once—

- (a) an individual has applied for a carer's allowance supplement in respect of a particular qualifying date, and
- (b) the Scottish Ministers have made a determination of the individual's entitlement to a carer's allowance supplement in respect of that date,

the individual cannot make another application for carer's allowance supplement in respect of that qualifying date.

(4) Despite paragraph (3), an individual may make another application for a carer's allowance supplement in respect of that qualifying date if the latest determination of the individual's entitlement to assistance in respect of that date states that the individual may make another application.

(5) If the Scottish Ministers reject something purporting to be an application for a carer's allowance supplement they must inform the individual of—

- (a) the decision to do that,
- (b) the reasons for it, and
- (c) the individual's right to appeal under paragraph 13.

### **Withdrawal of application**

2.—(1) An individual who has made an application for a carer's allowance supplement under regulation 5 may request that the Scottish Ministers disregard it.

(2) If an individual requests that an application be disregarded—

- (a) the Scottish Ministers are not to make a determination of entitlement on the basis of the application, and
- (b) accordingly, their duty to do so under regulation 5 ceases to apply.

(3) A request under sub-paragraph (1) must be made in such form as the Scottish Ministers require.

(4) The Scottish Ministers must publicise any requirements for the time being set under sub-paragraph (3).

### **Notice of determination**

3.—(1) Having made a determination under regulation 5 of an individual's entitlement to a carer's allowance supplement the Scottish Ministers must inform the individual—

- (a) of the determination,
- (b) of the reasons for it,
- (c) of the individual's right under paragraph 4 to request that the Scottish Ministers re-determine the individual's entitlement to the payment, and
- (d) that the individual will have the right under paragraph 9 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination in the period allowed for re-determination.

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

## PART 2

### Re-determination of entitlement

#### **Right to request re-determination and periods allowed**

4.—(1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a carer's allowance supplement after being informed (in accordance with paragraph 3) of a determination by the Scottish Ministers of the individual's entitlement to such a payment.

(2) Unless sub-paragraph (3) applies, a request for re-determination is valid only if it is made before the end of the period of 31 days beginning with the day that the individual is informed (in accordance with paragraph 3) of the right to make the request.

(3) A request for re-determination is valid if it is made after that period has ended, but before the end of the day that falls one year after the day on which the individual is informed (in accordance with paragraph 3) of the determination, if the individual has a good reason for not requesting a re-determination sooner (see paragraph 5).

(4) A request for re-determination is valid only if it is made in such form as the Scottish Ministers require.

(5) The Scottish Ministers must publicise any requirement for the time being set under sub-paragraph (4).

(6) If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in sub-paragraph (4), they must inform the individual concerned of—

- (a) the decision,
- (b) the reasons for it, and
- (c) the individual's right to appeal under paragraph 13.

#### **Late request for re-determination**

5.—(1) It is for—

- (a) the Scottish Ministers, or
- (b) on appeal under paragraph 13 the First-tier Tribunal for Scotland,

to decide whether, for the purpose of paragraph 4(3), an individual has a good reason for not requesting a re-determination sooner.

(2) Where the Scottish Ministers have made a decision under sub-paragraph (1), they must inform the individual concerned—

- (a) of the decision, and
- (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
  - (i) the reasons for the decision, and
  - (ii) the individual's right to appeal under paragraph 13.

#### **Duty to re-determine and period allowed**

6.—(1) On receiving a valid request under paragraph 4 to re-determine an individual's entitlement to a carer's allowance supplement the Scottish Ministers are to make a determination of the individual's entitlement to that payment.

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

- (2) The Scottish Ministers must aim to make that determination within the period of 16 working days beginning with—
- (a) the day that the request for a re-determination is received by the Scottish Ministers, or
  - (b) in the case of a request for a re-determination to which paragraph 4(3) applies (late requests), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual has a good reason for not requesting a re-determination sooner.
- (3) If the Scottish Ministers fail to make the determination within that period—
- (a) their duty to make the determination ends (but they may still make it), and
  - (b) paragraph 8 applies.
- (4) For the purpose of sub-paragraph (2), a “working day” is a day other than—
- (a) a Saturday
  - (b) a Sunday, or
  - (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(12)</sup>.

#### **Notice of re-determination**

7.—(1) Having made a determination under paragraph 6 of an individual’s entitlement to a carers allowance supplement, the Scottish Ministers must—

- (a) inform the individual—
  - (i) of the determination,
  - (ii) of the reasons for it,
  - (iii) of the individual’s right to appeal to the First-tier Tribunal under regulation 9 against the determination, and
- (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

#### **Notice where re-determination not made timeously**

8.—(1) Where the Scottish Ministers fail to make a determination under paragraph 6 within the period allowed by paragraph 6(2), the Scottish Ministers must—

- (a) inform the individual—
  - (i) that the individual’s request for a re-determination has not been dealt with within the period allowed, and
  - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under regulation 5 which prompted the request for a re-determination, and
- (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.

---

(12) 1971 c.80, paragraph 2 of schedule 1 sets out the Scottish bank holidays and was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

## PART 3

### Appeals

#### **Right to appeal to First-tier Tribunal against determination**

- 9.**—(1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under paragraph 6 of the individual’s entitlement to a carer’s allowance supplement, or
  - (b) in a case where sub-paragraph (2) applies, against the determination under regulation 5 referred to in that sub-paragraph.
- (2) This sub-paragraph applies where—
- (a) having been informed of a determination under regulation 5 of the individual’s entitlement to a carer’s allowance supplement, the individual has made a request for a re-determination under paragraph 4, and
  - (b) the Scottish Ministers have failed to make a determination under paragraph 6 in consequence of that request within the period described in paragraph 6(2).

#### **Initiating an appeal**

**10.**—(1) To bring an appeal against a determination, an individual must submit to the Scottish Ministers the form provided under paragraph 7(1)(b) or (as the case may be) paragraph 8(1)(b) in relation to the determination.

- (2) On receiving a form submitted under sub-paragraph (1), the Scottish Ministers must send—
- (a) the form, and
  - (b) the information held by them that they used to make the determination in question,
- to the First-tier Tribunal.

(3) Having complied with sub-paragraph (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.

(4) In this paragraph, references to a form include a copy of a form.

(5) For the avoidance of doubt, the form that the Scottish Ministers provide under paragraph 7 or 8 need not be a physical form.

#### **Deadline for appealing**

- 11.**—(1) An appeal under paragraph 9—
- (a) may be brought without the First-tier Tribunal’s permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
  - (b) may be brought only with the First-tier Tribunal’s permission if an appeal application is made after the period mentioned in sub-paragraph (1)(a),
  - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.
- (2) In sub-paragraph (1)—

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

- (a) “the relevant event” means—
    - (i) in the case of an appeal against a determination under paragraph 6, the individual to whom the determination relates being informed of it in accordance with paragraph 7(1),
    - (ii) in the case of an appeal against a determination under regulation 5, the individual to whom the determination relates being informed (in accordance with paragraph 8(1)) that the individual has the right to appeal against it,
  - (b) an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules require, is received by the Scottish Ministers having been submitted in accordance with paragraph 10(1).
- (3) The First-tier Tribunal may give permission under sub-paragraph (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.
- (4) In sub-paragraph (2)(b), “Scottish Tribunal Rules” has the meaning given by section 68(2) of the Tribunals (Scotland) Act 2014(13).

#### **First-tier Tribunal’s power to determine entitlement**

**12.** In an appeal under paragraph 9 against a determination of an individual’s entitlement to a carer’s allowance supplement, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual’s entitlement to a carer’s allowance supplement.

#### **Appeal to First-tier Tribunal against process decisions**

**13.—(1)** An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—

- (a) to reject something purporting to be an application for a carer’s allowance supplement (see paragraph 1)),
- (b) that something purporting to be a request for a re-determination does not satisfy the condition in paragraph 4(4),
- (c) that an individual has no good reason for not requesting a re-determination sooner (see paragraph 5).

(2) An appeal under this paragraph—

- (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with these Regulations,
- (b) may be brought only with the First-tier Tribunal’s permission after the period mentioned in sub-paragraph (2)(a),
- (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with these Regulations.

(3) The First-tier Tribunal may give permission under sub-paragraph (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.

(4) A decision by the First-tier Tribunal about—

- (a) the outcome of an appeal under this paragraph, or

---

(13) 2014 asp 10.



(b) whether to give permission under sub-paragraph (2)(b) for an appeal to be brought, is final.

(5) Accordingly (and without prejudice to the generality of sub-paragraph (4)), any such decision by the First-tier Tribunal may be neither—

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
- (b) appealed against under section 46 of that Act.

### **Presumption for purposes of paragraphs 1, 3, 4, 5, 7, 8 and 10**

**14.**—(1) Sub-paragraph (2) applies in relation to the references in paragraphs 1, 3, 4, 5, 7, 8, and 10 to an individual being informed of something by the Scottish Ministers in accordance with a provision of these Regulations.

(2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—

- (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
- (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of these Regulations,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.

### **Amendment of the Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018**

**15.**—(1) The Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018<sup>(14)</sup> are amended in accordance with paragraph (2).

(2) In regulation 3(1) (payment of expenses) for the words from “by” in the second place where it appears to “before” substitute “by the Social Security (Scotland) Act 2018<sup>(15)</sup>, by regulations made under that Act or by the Carer’s Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020<sup>(16)</sup>, before”.

## **PART 4**

### **Further provision about determining entitlement**

#### **Obtaining information to make a determination**

**16.**—(1) When the Scottish Ministers are determining an individual’s entitlement to a carer’s allowance supplement for the purposes of section 81(2A) of the 2018 Act—

- (a) they may require further information in order to satisfy themselves about any matter material to the making of the determination, and
- (b) they may request that the individual provide them with the information within such period as they specify.

(2) If the individual fails to provide the requested information by the end of the specified period, the Scottish Ministers may, without further consideration, proceed to make the determination on

---

<sup>(14)</sup> S.S.I. 2018/275.

<sup>(15)</sup> 2018 asp 9.

<sup>(16)</sup> S.S.I. 2020/475.

the basis that the individual does not satisfy the conditions in section 81(9) or (as the case may be) section 81(11) or (13) of the 2018 Act.

#### **Duty to inform about possible eligibility**

**17.**—(1) Paragraph (2) applies if, in the course of their making a determination of an individual’s entitlement to a carer’s allowance supplement under regulation 5, it appears to the Scottish Ministers that the individual may be entitled to a type of assistance described in Chapter 2 of Part 2 of the 2018 Act or to assistance provided for by regulations made under section 79 of that Act.

(2) The Scottish Ministers must—

(a) inform the individual that the individual may be eligible for the assistance, and

(b) either—

(i) provide the individual with information about how to apply for it, or

(ii) if regulations made under section 52 or 79 of the 2018 Act so allow, ask the individual whether they should proceed with making a determination of the individual’s entitlement to the assistance without receiving an application.

(3) Paragraph (2)(b)(ii) does not preclude the Scottish Ministers from requesting further information under paragraph 16 for the purpose of determining the individual’s entitlement to the assistance described in paragraph (1).

#### **Appointment of a person to act on behalf of an individual**

**18.** Section 58 or (as the case may be) section 85B(17) of the 2018 Act applies in respect of the determination of an individual’s entitlement to a carer’s allowance supplement under regulation 5 as it does to a determination of entitlement to assistance under Part 2 or 3 of the 2018 Act.

## **PART 5**

### **Coronavirus – relaxation of deadlines**

#### **Re-determination and appeal deadlines**

**19.**—(1) A request for a re-determination is valid, despite being made after the expiry of the period described in paragraph 4(3), if the person deciding whether the individual has a good reason for not requesting a re-determination sooner decides that the individual has a good reason that is related to coronavirus.

(2) An appeal may be brought under paragraph 9 despite the appeal application being made after the expiry of the period described in paragraph 11(1)(c), if the First-tier Tribunal gives permission for the appeal to be brought under sub-paragraph (1)(b) of that paragraph on the basis of being satisfied that the good reason for the application not being made sooner is related to coronavirus.

(3) Any provision of Scottish Tribunal Rules that would (but for this sub-paragraph) have the effect of precluding an appeal being brought by virtue of sub-paragraph (2) is to be disregarded to the extent that it would have that effect.

(4) In this paragraph—

“coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020(18),

(17) Section 85B is to be inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18) (“the 2020 Act”). Section 58 of the Social Security (Scotland) Act 2018 is prospectively repealed by section 2(2) of the 2020 Act.

(18) 2020 asp 7.

“Scottish Tribunal Rules” has the meaning given by paragraph 11(4).