



Scotland Act 2016

2016 CHAPTER 11

PART 3

WELFARE BENEFITS AND EMPLOYMENT SUPPORT

Welfare benefits

22 Disability, industrial injuries and carer's benefits

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 (social security schemes) is amended as follows.
- (2) In the Exceptions, before the paragraph beginning “The subject-matter of Part II of the Social Work (Scotland) Act 1968” insert—

“Exception 1

Any of the following benefits—

- (a) disability benefits, other than severe disablement benefit or industrial injuries benefits,
- (b) severe disablement benefit, so far as payable in respect of a relevant person, and
- (c) industrial injuries benefits, so far as relating to relevant employment or to participation in training for relevant employment;

but this exception does not except a benefit which is, or which is an element of, an excluded benefit.

Exception 2

Carer's benefits, other than a benefit which is, or which is an element of, an excluded benefit.”

- (3) In the Exceptions, at the beginning of the paragraph beginning “The subject-matter of Part II of the Social Work (Scotland) Act 1968” insert—
“Exception 3”.

Status: This is the original version (as it was originally enacted).

(4) In the Interpretation provision, after “local taxes.” insert—

““Disability benefit” means a benefit which is normally payable in respect of—

- (a) a significant adverse effect that impairment to a person’s physical or mental condition has on his or her ability to carry out day-to-day activities (for example, looking after yourself, moving around or communicating), or
- (b) a significant need (for example, for attention or for supervision to avoid substantial danger to anyone) arising from impairment to a person’s physical or mental condition;

and for this purpose the adverse effect or need must not be short-term.

“Severe disablement benefit” means a benefit which is normally payable in respect of—

- (a) a person’s being incapable of work for a period of at least 28 weeks beginning not later than the person’s 20th birthday, or
- (b) a person’s being incapable of work and disabled for a period of at least 28 weeks;

and “relevant person”, in relation to severe disablement benefit, means a person who is entitled to severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 on the date on which section 22 of the Scotland Act 2016 comes into force as respects severe disablement benefit.

“Industrial injuries benefit” means a benefit which is normally payable in respect of—

- (a) a person’s having suffered personal injury caused by accident arising out of and in the course of his or her employment, or
- (b) a person’s having developed a disease or personal injury due to the nature of his or her employment;

and for this purpose “employment” includes participation in training for employment.

“Relevant employment”, in relation to industrial injuries benefit, means employment which—

- (a) is employed earner’s employment for the purposes of section 94 of the Social Security Contributions and Benefits Act 1992 as at 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2016), or
- (b) would be such employment but for—
 - (i) the contract purporting to govern the employment being void, or
 - (ii) the person concerned not being lawfully employed,

as a result of a contravention of, or non-compliance with, provision in or made by virtue of an enactment passed to protect employees.

“Carer’s benefit” means a benefit which is normally payable in respect of the regular and substantial provision of care by a person to a disabled person; and for this purpose “disabled person” means a person to whom a disability benefit is normally payable.

“Excluded benefit” means—

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

- (a) a benefit, entitlement to which, or the amount of which, is normally determined to any extent by reference to a person's income or capital (for example, universal credit under Part 1 of the Welfare Reform Act 2012),
- (b) a benefit which is payable out of the National Insurance Fund (for example, employment and support allowance under section 1(2)(a) of the Welfare Reform Act 2007), or
- (c) a benefit payable by way of lump sum in respect of a person's having, or having had—
 - (i) pneumoconiosis,
 - (ii) byssinosis,
 - (iii) diffuse mesothelioma,
 - (iv) bilateral diffuse pleural thickening, or
 - (v) primary carcinoma of the lung where there is accompanying evidence of one or both of asbestosis and bilateral diffuse pleural thickening.

“Employment” includes any trade, business, profession, office or vocation (and “employed” is to be read accordingly).”

23 Benefits for maternity, funeral and heating expenses

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 is amended as follows.

(2) In the Exceptions, after exception 3 (see section 22(3) above) insert—

“Exception 4

Providing financial or other assistance for the purposes of meeting or reducing—

- (a) maternity expenses,
- (b) funeral expenses, or
- (c) expenses for heating in cold weather.”

(3) In the Exceptions, for the words from “But the following are not excepted” to “Act 2000 (discretionary housing payments).” substitute—

“Exclusions from exceptions 1 to 10

Nothing in exceptions 1 to 10 is to be read as excepting—

- (a) the National Insurance Fund,
- (b) the Social Fund, or
- (c) the provision by a Minister of the Crown of assistance by way of loan for the purpose of meeting, or helping to meet, an intermittent expense.”

(4) In the Interpretation provision, omit the words from “Paragraph 5(1) of Part 3 of this Schedule” to “it is to be treated as if it were.”

(5) In section 138 of the Social Security Contributions and Benefits Act 1992 (payments out of the social fund) after subsection (4) insert—

“(4A) This section has effect in or as regards Scotland as if—

- (a) references in subsections (1)(a) and (2) to the making of payments out of the social fund were to the making of payments by the Scottish Ministers,
- (b) the reference in subsection (2) to the Secretary of State were to the Scottish Ministers, and

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- (c) the reference in subsection (4) to regulations were to regulations made by the Scottish Ministers.

(4B) Where regulations are made by the Scottish Ministers under this section—

- (a) sections 175(2) and (7) and 176 do not apply, and
- (b) the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(4C) The power to make an Order in Council under section 30(3) of the Scotland Act 1998 is exercisable for the purposes of this section as it is exercisable for the purposes of that Act.”

24 Discretionary payments: top-up of reserved benefits

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 4 (see section 23 above) insert—

“Exception 5

Providing financial assistance to an individual who—

- (a) is entitled to a reserved benefit, and
- (b) appears to require financial assistance, in addition to any amount the individual receives by way of reserved benefit, for the purpose, or one of the purposes, for which the benefit is being provided.

This exception does not except discretionary financial assistance in a reserved benefit.

This exception also does not except providing financial assistance to meet or help to meet housing costs (as to which, see exception 6).

This exception also does not except providing financial assistance where the requirement for it arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual’s conduct (for example, non-compliance with work-related requirements relating to the benefit) unless—

- (a) the requirement for it also arises from some exceptional event or exceptional circumstances, and
- (b) the requirement for it is immediate.

For the purposes of this exception “reserved benefit” means a benefit which is to any extent a reserved matter.”

25 Discretionary housing payments

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, after exception 5 (see section 24 above) insert—

“Exception 6

Providing financial assistance to an individual who—

- (a) is entitled to—
 - (i) housing benefit, or
 - (ii) any other reserved benefit payable in respect of a liability to make rent payments, and

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

- (b) appears to require financial assistance, in addition to any amount the individual receives by way of housing benefit or such other reserved benefit, to meet or help to meet housing costs.

This exception does not except discretionary financial assistance in a reserved benefit.

This exception also does not except providing financial assistance where the requirement for it arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit) unless—

- (a) the requirement for it also arises from some exceptional event or exceptional circumstances, and
- (b) the requirement for it is immediate.

For the purposes of this exception—

“rent payments”—

- (a) has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 ([S.I. 2013/376](#)) or any re-enactment of that paragraph, or
- (b) if at any time universal credit ceases to be payable to anyone, has the meaning given by that paragraph or any re-enactment of that paragraph immediately before that time;

“reserved benefit” means a benefit which is to any extent a reserved matter.”

26 Discretionary payments and assistance

In Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998, in the Exceptions, for the words from “Providing occasional financial” to “unsettled way of life.” substitute—

“Exception 7

Providing financial or other assistance to or in respect of individuals who appear to require it for the purposes of meeting, or helping to meet, a short-term need that requires to be met to avoid a risk to the well-being of an individual.

This exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a benefit as a result of an individual's conduct (for example, non-compliance with work-related requirements relating to the benefit) unless—

- (a) the requirement for it also arises from some exceptional event or exceptional circumstances, and
- (b) the need is immediate as well as short-term.

Exception 8

Providing occasional financial or other assistance to or in respect of individuals who have been or might otherwise be—

- (a) in prison, hospital, a residential care establishment or other institution, or
- (b) homeless or otherwise living an unsettled way of life,

and who appear to require the assistance to establish or maintain a settled home.”

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

27 Welfare foods

- (1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section F1 is amended as follows.
- (2) In the Exceptions, after exception 8 (see section 26 above) insert—

“Exception 9

The subject-matter of section 13 of the Social Security Act 1988 (benefits under schemes for improving nutrition: pregnant women, mothers and children).”
- (3) In the Interpretation provision, at the end insert—

“The reference to the subject-matter of section 13 of the Social Security Act 1988 is to be construed as a reference to it as at the day on which section 27 of the Scotland Act 2016 comes into force (and, accordingly, paragraph 5(1) of Part 3 of this Schedule does not apply to that reference).”
- (4) Omit Section J5 (welfare foods).
- (5) In the Social Security Act 1988, in section 13(2) (benefits under schemes for improving nutrition: consultation) omit “the Scottish Ministers and”.

28 Power to create other new benefits

- (1) The Scotland Act 1998 is amended as follows.
- (2) In Section F1 of Part 2 of Schedule 5, in the Exceptions, after exception 9 (see section 27 above) insert—

“Exception 10

Schemes which provide assistance for social security purposes to or in respect of individuals by way of benefits and which—

- (a) are supported from sums paid out of the Scottish Consolidated Fund,
- (b) do not fall within exceptions 1 to 9, and
- (c) are not connected with reserved matters (other than matters reserved only by virtue of this Section).

This exception does not except providing assistance by way of pensions to or in respect of individuals who qualify by reason of old age.

This exception does not except providing assistance where the requirement for it arises from reduction, non-payability or suspension of a reserved benefit as a result of an individual’s conduct (for example, non-compliance with work-related requirements relating to the benefit) unless—

- (a) the requirement for it also arises from some exceptional event or exceptional circumstances, and
- (b) the requirement for it is immediate.

For the purposes of this exception “reserved benefit” means a benefit which is to any extent a reserved matter.

In this exception the reference to schemes supported from sums paid out of the Scottish Consolidated Fund does not include schemes—

- (a) in respect of which sums are at some time paid out of the Scottish Consolidated Fund, but

- (b) which are directly supported from payments out of the Consolidated Fund, the National Insurance Fund or the Social Fund, or out of money provided by Parliament.”
- (3) Schedule 4 (enactments etc protected from modification) is amended as follows.
- (4) In paragraph 2, at the end insert—
 - “(5) Sub-paragraph (3) does not affect sub-paragraph (1) as it applies to an Act of the Scottish Parliament so far as any matter to which a provision of the Act relates falls within exception 10 of Section F1 of Part 2 of Schedule 5.”
- (5) In paragraph 3, at the end insert—
 - “(3) Sub-paragraph (1) does not affect the application of paragraph 2 to modifications which are incidental to, or consequential on, any provision, if it is only by virtue of exception 10 of Section F1 of Part 2 of Schedule 5 that the provision does not relate to reserved matters.”

29 Universal credit: costs of claimants who rent accommodation

- (1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.
- (2) This section applies to—
 - (a) regulations under section 11(4) of the Welfare Reform Act 2012 (determination and calculation of housing cost element), so far as relating to any liability of a claimant in respect of accommodation which the claimant rents, and
 - (b) regulations under section 5(1)(p) of the Social Security Administration Act 1992 (payments to another person on behalf of the beneficiary), so far as relating to the payment of an amount of universal credit in respect of any such liability.
- (3) For the purposes of this section—
 - (a) a claimant “rents” accommodation if he or she is liable to make rent payments (with or without other payments) in respect of it, and
 - (b) “rent payments” has the meaning given from time to time by paragraph 2 of Schedule 1 to the Universal Credit Regulations 2013 ([S.I. 2013/376](#)).
- (4) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless they have consulted the Secretary of State about the practicability of implementing the regulations.
- (5) If—
 - (a) the Scottish Ministers make regulations to which this section applies, and
 - (b) the Secretary of State considers that it is not practicable to implement a change made by the regulations by the time that change is to start to have effect,the Secretary of State may by regulations made by statutory instrument amend the regulations so that the change is to start to have effect from a time later than the time originally set.
- (6) The altered time must be no later than the Secretary of State considers necessary, having regard to the practicability of implementing the change.

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

- (7) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.
- (8) Where regulations are made by the Scottish Ministers by virtue of subsection (1)—
 - (a) section 43(1) of the Welfare Reform Act 2012 (in the case of regulations referred to in subsection (2)(a)) and section 189(3) of the Social Security Administration Act 1992 (in the case of regulations referred to in subsection (2)(b)) do not apply, and
 - (b) the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

30 Universal credit: persons to whom, and time when, paid

- (1) A function of making regulations to which this section applies, so far as it is exercisable by the Secretary of State in or as regards Scotland, is exercisable by the Scottish Ministers concurrently with the Secretary of State.
- (2) This section applies to regulations under section 5(1)(i) of the Social Security Administration Act 1992, so far as relating to the person to whom, or the time when, universal credit is to be paid.
- (3) The Scottish Ministers may not exercise the function of making regulations to which this section applies unless they have consulted the Secretary of State about the practicability of implementing the regulations.
- (4) If—
 - (a) the Scottish Ministers make regulations to which this section applies, and
 - (b) the Secretary of State considers that it is not practicable to implement a change made by the regulations by the time that change is to start to have effect,the Secretary of State may by regulations made by statutory instrument amend the regulations so that the change is to start to have effect from a time later than the time originally set.
- (5) The altered time must be no later than the Secretary of State considers necessary, having regard to the practicability of implementing the change.
- (6) The Secretary of State may not exercise the function of making regulations to which this section applies in or as regards Scotland unless he or she has consulted the Scottish Ministers.
- (7) Where regulations are made by the Scottish Ministers by virtue of subsection (1)—
 - (a) section 189(3) of the Social Security Administration Act 1992 does not apply, and
 - (b) the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Employment support

31 Employment support

(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section H3 (job search and support) is amended as follows.

(2) For the heading “Exception” substitute “Exceptions”.

(3) After that heading insert—

“Exception 1

The making by a person of arrangements for, or arrangements for the purposes of or in connection with a scheme for, any of the following purposes—

- (a) assisting disabled persons to select, obtain and retain employment;
- (b) assisting persons claiming reserved benefits who are at risk of long-term unemployment to select, obtain and retain employment, where the assistance is for at least a year;
- (c) assisting employers to obtain suitable employees who are persons referred to in paragraph (a) or (b).

The arrangements referred to in this exception include—

- (a) securing that the assistance referred to in this exception is provided by another person;
- (b) providing or arranging for the provision of facilities, support or services to any person;
- (c) the making of payments to any person.

The assistance referred to in this exception includes—

- (a) work search support,
- (b) skills training, and
- (c) work placements for the benefit of the community.

In this exception—

- (a) “disabled person” has the same meaning as it has in the Equality Act 2010 as at 28 May 2015 (the date of introduction into Parliament of the Bill for the Scotland Act 2016);
- (b) “reserved benefit” means a benefit which is to any extent a reserved matter.”

(4) At the beginning of the existing exception which begins “The subject-matter of—” insert—

“Exception 2”.

(5) The Scotland Act 1998 has effect as if section 56(1)(g) of that Act included a reference to section 17B of the Jobseekers Act 1995.

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

General

32 Functions exercisable within devolved competence

- (1) The Scotland Act 1998 (“the 1998 Act”) has effect, in relation to any function so far as exercisable within devolved competence by virtue of a provision of section 22, 23, 24, 25, 26, 27 or 31, as if references to a “pre-commencement enactment” were to—
 - (a) an Act passed before or in the same session as the relevant date,
 - (b) any other enactment made before the relevant date,
 - (c) subordinate legislation under section 106 of the 1998 Act, to the extent that the legislation states that it is to be treated as a pre-commencement enactment, but did not include the 1998 Act or this Act (or any amendment made by either of those Acts) or, subject to paragraph (c), an enactment comprised in subordinate legislation under either of those Acts.
- (2) In this section—
 - (a) expressions used in the 1998 Act have the same meaning as in that Act;
 - (b) in relation to a provision of section 22, 23, 24, 25, 26, 27 or 31, the relevant date for any purpose is the date on which the provision comes into force for that purpose.
- (3) In section 53 of the 1998 Act (general transfer of functions), after subsection (3) insert—

“(3A) But see sections 9, 32 and 51 of the Scotland Act 2016 (which give “pre-commencement enactment” a different meaning for functions exercisable within devolved competence by virtue of certain provisions of that Act).”

33 Social Security Advisory Committee and Industrial Injuries Advisory Council

- (1) Section 53 of the Scotland Act 1998 does not apply in relation to any function of a Minister of the Crown under the legislation relating to social security and industrial injuries advisory bodies.
- (2) Section 117 of that Act does not apply in relation to any reference to a Minister of the Crown in that legislation.
- (3) In this section—

“the legislation relating to social security and industrial injuries advisory bodies” means any provision of sections 170 to 174 of, and Schedules 5 to 7 to, the Social Security Administration Act 1992 (Social Security Advisory Committee and Industrial Injuries Advisory Council);

“Minister of the Crown” includes the Treasury.

34 Information-sharing

- (1) Information held by the Secretary of State for the purpose of a social security function may be supplied by the Secretary of State to the Scottish Ministers for use for the purpose of a relevant Scottish social security function.
- (2) Where information is supplied to the Scottish Ministers under subsection (1) for use for any purpose, they may use it for any other purposes for which information held by them for that purpose may be used.

- (3) Information held by the Scottish Ministers for the purpose of a relevant Scottish social security function may be supplied by them to the Secretary of State for use for the purpose of a social security function.
- (4) Where information is supplied to the Secretary of State under subsection (3) for use for any purpose, the Secretary of State may use it for any other purposes for which information held by him or her for that purpose may be used.
- (5) In subsections (1) to (4)—
- (a) references to the Secretary of State include a person providing services to him or her;
 - (b) references to the Scottish Ministers include a person providing services to them.
- (6) Information supplied under this section must not be supplied by the recipient of the information to any other person or body without—
- (a) the authority of the Secretary of State, in the case of information supplied under subsection (1);
 - (b) the authority of the Scottish Ministers, in the case of information supplied under subsection (3).
- (7) In this section—
- “social security function” means a function of the Secretary of State relating to—
- (a) social security,
 - (b) the investigation or prosecution of offences relating to tax credits,
 - (c) employment or training,
 - (d) war pensions,
 - (e) welfare foods, or
 - (f) any other prescribed matter;
- “relevant Scottish social security function” means—
- (a) a function which is exercisable by the Scottish Ministers within devolved competence by virtue of any of the following provisions of Part 2 of Schedule 5 to the Scotland Act 1998—
 - (i) exceptions 1, 2, 4 to 8 and 10 in Section F1 (social security schemes), and
 - (ii) exception 1 in Section H3 (job search and support);
 - (b) a function of the Scottish Ministers under or by virtue of—
 - (i) section 29 (universal credit: costs of claimants who rent accommodation), or
 - (ii) section 30 (universal credit: persons to whom, and time when, paid);
 - (c) a function of the Scottish Ministers relating to welfare foods;
 - (d) any other prescribed function of the Scottish Ministers.
- (8) In subsection (7)—
- (a) the reference to a function being exercisable within devolved competence is to be read in accordance with section 54 of the Scotland Act 1998;
 - (b) “war pensions” means schemes for the payment of pensions, grants, allowances, supplements or gratuities for or in respect of persons who have a

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disablement or have died in consequence of service as members of the armed forces of the Crown;

(c) “prescribed” means prescribed by regulations made by the Secretary of State.

(9) Regulations under this section must be made by statutory instrument.

(10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

35 Extension of unauthorised disclosure offence

(1) Part 2 of Schedule 4 to the Social Security Administration Act 1992 is amended as follows.

(2) After paragraph 1A insert—

“1B The reference in Part 1 of this Schedule to the Scottish Administration is a reference to that Administration only to the extent that the functions carried out by persons in its employ—

(a) relate to social security, or

(b) are, or are connected with, functions of the First-tier Tribunal or Upper Tribunal which relate to social security or to occupational or personal pension schemes or to war pensions or functions of the Chief, or any other, Social Security Commissioner.”

(3) In paragraph 3, omit “, the Scottish Administration”.