



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

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“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—

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- (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).”

Commencement Information

- I1** S. 22(1) in force at 5.9.2016 for specified purposes by S.I. 2016/759, reg. 3(a)(i)
- I2** S. 22(1) in force at 17.5.2017 in so far as not already in force by S.I. 2017/455, reg. 2(a)(i)
- I3** S. 22(2)(4) in force at 17.5.2017 by S.I. 2017/455, reg. 2(a)(ii)
- I4** S. 22(3) in force at 5.9.2016 by S.I. 2016/759, reg. 3(a)(ii)

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.”

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- (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
 - (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.”

Modifications etc. (not altering text)

- C1** S. 23 modified (temp.) (17.5.2017) by [The Scotland Act 2016 \(Transitional\) Regulations 2017 \(S.I. 2017/444\)](#), [regs. 3\(1\)\(2\), 4](#) (as amended (21.11.2019) by [The Scotland Act 2016 \(Transitional\) \(Amendment\) Regulations 2019 \(S.I. 2019/1439\)](#), [regs. 1, 2\(2\)](#))
- C2** S. 23 modified (temp.) (17.5.2017) by [The Scotland Act 2016 \(Transitional\) Regulations 2017 \(S.I. 2017/444\)](#), [regs. 6, 7](#) (as amended (21.11.2019) by [The Scotland Act 2016 \(Transitional\) \(Amendment\) Regulations 2019 \(S.I. 2019/1439\)](#), [regs. 1, 2\(3\)](#))

Commencement Information

- I5** S. 23(1) in force at 5.9.2016 for specified purposes by [S.I. 2016/759](#), [reg. 3\(b\)\(i\)](#)
- I6** S. 23(1) in force at 17.5.2017 in so far as not already in force by [S.I. 2017/455](#), [reg. 2\(b\)\(i\)](#)
- I7** S. 23(2)(4) in force at 17.5.2017 by [S.I. 2017/455](#), [reg. 2\(b\)\(ii\)](#)
- I8** S. 23(3) in force at 5.9.2016 by [S.I. 2016/759](#), [reg. 3\(b\)\(ii\)](#)
- I9** S. 23(5) in force at 17.5.2017 for specified purposes by [S.I. 2017/455](#), [reg. 2\(b\)\(iii\)](#)

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.

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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.”

Commencement Information

I10 S. 24 in force at 5.9.2016 by S.I. 2016/759, reg. 3(c)

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
- (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

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- (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.”

Commencement Information

I11 S. 25 in force at 1.4.2017 by S.I. 2016/759, reg. 4

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.”

Commencement Information

I12 S. 26 in force at 5.9.2016 by S.I. 2016/759, reg. 3(d)

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

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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”.

Commencement Information

I13 S. 27 in force at 8.2.2019 by S.I. 2018/1364, reg. 2

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.”

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- (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.”

Commencement Information

I14 S. 28 in force at 5.9.2016 by S.I. 2016/759, reg. 3(e)

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.

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- (6) The altered time must be no later than the Secretary of State considers necessary, having regard to the practicability of implementing the change.
- (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).

Commencement Information

I15 S. 29 in force at 5.9.2016 by S.I. 2016/759, reg. 3(f)

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).

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Commencement Information

I16 S. 30 in force at 5.9.2016 by S.I. 2016/759, reg. 3(g)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2017/455, reg. 3 by [S.I. 2019/1438 reg. 2](#)