

The Carer's Allowance Supplement (Qualifying Individuals) and Young Carer Grant Amendment (Scotland) Regulations 2020 – Policy note

This note sets out a broad policy summary of The Carer's Allowance Supplement (Qualifying Individuals) and Young Carer Grant Amendment (Scotland) Regulations 2020. These draft regulations are provided to the Scottish Commission on Social Security (SCoSS) as required by section 97(2) of the Social Security (Scotland) Act 2018.

Background

1. EU rules on social security coordination apply across the EEA and Switzerland. They are intended to ensure that people exercising their rights of free movement within the EEA and Switzerland are not adversely affected by the application of different social security systems.
2. Each Member State is under an obligation to report new benefits introduced or material changes to existing benefits to the Administrative Commission for the Coordination of Social Security Systems. This is an EU Committee with representatives of each Member State which meets at least four times each year to facilitate dialogue between Member States and promote the proper functioning of the EU rules.
3. In discussions between UK Government and the Administrative Commission on existing devolved forms of assistance, the Administrative Commission's view was that CAS and YCG are 'exportable', having been classified as social security 'cash sickness benefits'. Both forms of assistance have no direct UK-level equivalent, however, Carer's Allowance (CA), which is the qualifying benefit for CAS is an 'exportable' benefit – as are, in part, the qualifying disability benefits which the cared-for person must be receiving for both CA and YCG.
4. The Carer's Allowance Supplement (Qualifying Individuals) and Young Carer Grants Amendment (Scotland) Regulations will expand the residency criteria for both forms of support to meet the requirements of the EU rules. This will mean eligible carers can, in certain circumstances, apply for and receive these benefits where they are resident in the EEA or Switzerland. This can include people currently in receipt of support who move to an EEA member state or Switzerland, and those who make a first claim for assistance from there.

Criteria for exporting Carer's Allowance Supplement and Young Carer Grant

5. The regulations expand the residency criteria for CAS and YCG so that people can apply for and receive these benefits when resident in the EEA or Switzerland, where the United Kingdom remains the 'competent state' for payment of sickness benefits to them, and they can demonstrate a 'genuine and sufficient link' to Scotland.

'Competent state' for payment of sickness benefits

6. The social security coordination rules mean only one country's legislation applies to an individual at any one time, and the country which is responsible for paying benefits to an individual is known as their 'competent state'. This is normally the state in which a person lives, is employed, or from which they receive benefits, including state pensions.
7. In practice, we anticipate this means people who may be eligible to export CAS and YCG will be those living in the EEA or Switzerland who are not employed where they live, but continue to be employed by the UK, and those who are already exporting a UK benefit. They may also be the dependent of a family member who is accessing a UK state pension or workers posted abroad for a period of less than a year.

'Genuine and sufficient link' to Scotland

8. A 'genuine and sufficient link' test has been found in court to be compatible with the social security coordination rules. It's not a set of prescribed factors, but can take into account things like whether someone has spent a significant part of their life in the place in question, whether they have worked, paid contributions, own property or have family there.
9. In keeping with this we have not set out a list of factors in the regulations which we would consider to demonstrate a 'genuine and sufficient link' to Scotland, as this would be an overly prescriptive approach which may not meet the EU law requirements. European Court of Justice case law highlights the need for flexibility in the range of factors by which a link may be demonstrated.
10. The regulations will be supported by decision-making guidance for Social Security Scotland. This will be a consistent approach which will be taken across all devolved benefits which are considered to be exportable under EU rules.

Applications and past payments

11. CAS is currently an automatic payment made using data from the DWP on people living in Scotland and receiving CA. It will not be possible to identify all carers eligible to receive CAS outside of the UK using existing data. So in order to make the necessary provisions for people outside of Scotland, the regulations will not extend this automatic payment system, but instead provide for determinations to be made in relation to entitlement to CAS for people in the EEA and Switzerland.
12. Determinations will occur either as a result of an application by the individual, or on the basis of data provided by the DWP. We are currently in discussions with DWP about the information which can be provided on potential CAS clients, to be supplemented with information obtained from the individual. Using a process of determinations rather than automatic payments will allow us to ensure the individual meets the eligibility criteria and can demonstrate a 'genuine and sufficient link' to Scotland.
13. YCG regulations already provide for an applications process within Scotland, and outside of the UK where a grant has previously been received in Scotland. The

regulations expand this so these provisions can apply to first-time applications for YCG being made from outside of the UK.

14. As CAS has been available since 2018 and YCG since 2019, the regulations will also allow for applications to be made by people outside of the UK for payments of both forms of support in relation to previous periods of care, completed before the regulations come into force. These will go back to the respective launch dates. This will ensure that people can claim for CAS or YCG where they would have been entitled to it previously, had the two forms of support been fully exportable at the time they were introduced.

Carer's Allowance Supplement – other provisions

15. CAS was created as an interim measure under section 81 of the 2018 Act. As such the provisions that apply automatically to benefits created under Chapter 2 of the 2018 Act do not apply to CAS. The regulations therefore apply other relevant provisions of the 2018 Act to 'exported' CAS. These are required in light of the fact that an application needs to be made to export CAS.
16. Regulations will apply re-determination and appeal rights to CAS which is applied for from outside the UK. These are not needed in Scotland as it is an automatic payment which does not require Social Security Scotland to carry out a determination.
17. However, the new test being applied for export will involve a determination from Social Security Scotland on the client's entitlement – and therefore re-determination and appeal provisions are needed for CAS in relation to the determination process for those outside of the UK.
18. Regulations will also extend provisions on appointees in section 58 of the 2018 Act to CAS, for those looking to receive CAS outside of the UK. This is because some prospective CAS recipients may have appointees for receipt of CA who may wish to make applications for, and receive payments of, CAS on their behalf. Amendments being made to section 58 as part of the Social Security Administration and Tribunals Bill will, if passed, apply to CAS for those outside of the UK once they come into force. These provisions are not required for CAS payments in Scotland as payments are made automatically to any existing appointees included in the data provided by DWP.

Delivery

19. As highlighted above, we are currently in discussions with DWP about the use of existing data to support the identification of potential CAS clients outside of the UK. However, as there may be people who are not included in this data, and there is no comparable data for YCG, a communications plan and an application process will be needed to ensure all eligible carers can access this support.
20. We will be engaging with stakeholders on the development of the processes and on the communications and engagement needed to ensure eligible carers are aware of and can apply for this support.

Jane Sterry, Social Security Policy Division
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