

# **SOCIAL SECURITY (SCOTLAND) ACT 2018**

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## **EXPLANATORY NOTES**

### **OVERVIEW**

#### **Part 3 (Supplementing Assistance under Other Enactments)**

##### **Top up of reserved benefits**

115. **Sections 79 and 80** enable regulations to provide for top up payments to a person who is entitled to any reserved benefit. The definition of “reserved benefit” matches that in exception 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998. Loosely, it means a benefit provided by the UK Government for which the Scottish Parliament does not have competence to legislate. The recipient of any top-up payment must appear to the Scottish Ministers to need the additional assistance for a purpose for which the reserved benefit is provided.
116. The detail of any top-up payments would be set out in regulations under section 79. The section further provides for regulations to set out how entitlement to top-up assistance is to be determined, the amount of assistance, the process by which assistance is sought and determined, and what happens if assistance is given incorrectly.
117. These sections (i.e. 79 and 80) reflect the legislative competence given to the Scottish Parliament by section 24 of the Scotland Act 2016 to legislate for top-up payments. Section 80 states restrictions on what regulations can do, which repeat restrictions on the Parliament’s competence. These include that top-up assistance cannot be given to help meet housing costs, nor can a top-up payment be provided where, for example, the need arises solely as a result of a sanction because of non-compliance with a work-related requirement in a reserved benefit.

##### **Carer’s Allowance: temporary provision**

118. **Section 81** places a statutory duty on the Scottish Ministers to pay a supplement on a twice-yearly basis to persons who receive Carer’s Allowance in Scotland. Ministers are to determine a “qualifying date” in each half of the financial year, and persons who are receiving a Carer’s Allowance on that date, and who are resident in Scotland, will receive the supplement. Ministers are given the power to modify these two criteria. The section provides for calculation of the supplement, which is designed to reflect the difference between the rate at which Carer’s Allowance is paid and the rate of Jobseeker’s Allowance, adjusted for inflation as described in subsection (5). At the time of writing the rate of Jobseeker’s Allowance is not being uprated annually for inflation by the UK Government. Subsection (5) requires the Scottish Ministers to publish an uprated figure before the start of each tax year (defined by subsection (7)). Each payment will be the equivalent of 26 times the difference between the two figures (Carer’s Allowance and uprated Jobseeker’s Allowance) on the qualifying date. The intention is to provide that carers will receive a supplement so that the amount of Carer’s Allowance that a person receives on an annual basis will effectively be the same as the person would receive had they been in receipt of uprated Jobseeker’s Allowance.

*These notes relate to the Social Security (Scotland) Act  
2018 (asp 9) which received Royal Assent on 1 June 2018*

119. The supplement is being provided because the Scottish Ministers cannot immediately increase the rate at which Carer's Allowance is paid to match the rate of Jobseeker's Allowance. It is envisaged that the supplement will cease to be needed once regulations under section 28 have been made to provide a scheme for carer's assistance, as that can provide for payments at the increased rate.
120. [Section 82](#) allows the Scottish Ministers to repeal the duty to pay the supplement and revoke any regulations made under it. This is to allow the statute book to be tidied up by removing the carer's allowance supplement provisions when the supplement is no longer needed as a result of the Scottish carer's assistance going live.