
Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: Head F – Social Security. (See end of Document for details)

SCHEDULES

SCHEDULE 5

RESERVED MATTERS

PART II

SPECIFIC RESERVATIONS

Head F – Social Security

F1. Social security schemes

Section F1.

Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.

Requiring persons to—

- (a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or
- (b) make payments to or in respect of such schemes,

and to keep records and supply information in connection with such schemes.

The circumstances in which a person is liable to maintain himself or another for the purposes of the enactments relating to social security and the Child Support Acts 1991 and 1995.

The subject-matter of the Vaccine Damage Payment Scheme.

Illustrations

National Insurance; Social Fund; ^{F1}... recovery of benefits for accident, injury or disease from persons paying damages; deductions from benefits for the purpose of meeting an individual's debts; sharing information between government departments for the purposes of the enactments relating to social security; making decisions for the purposes of schemes mentioned in the reservation and appeals against such decisions.

Exceptions

[^{F2}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.

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Exception 2

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

[^{F3}Exception 3]

The subject-matter of Part II of the Social Work (Scotland) Act 1968 (social welfare services), section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of welfare services), section 50 of the Children Act 1975 (payments towards maintenance of children), section 15 of the Enterprise and New Towns (Scotland) Act 1990 (industrial injuries benefit), and sections 22 (promotion of welfare of children in need), 29 and 30 (advice and assistance for young persons formerly looked after by local authorities) of the Children (Scotland) Act 1995.

[^{F4}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.]

[^{F5}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.]

[^{F6}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

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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.]

[^{F7}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.]

[^{F8}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).]

[^{F9}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

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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.]

[^{F10}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.]

Interpretation

“Benefits” includes pensions, allowances, grants, loans and any other form of financial assistance.

Providing assistance for social security purposes to or in respect of individuals includes (among other things) providing assistance to or in respect of individuals—

- (a) who qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care,
- (b) who qualify by reason of low income, or
- (c) in relation to their housing costs or liabilities for local taxes.

[^{F11}“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.

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“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—

- (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).]

F12 ...

[^{F13}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).]

Textual Amendments

- F1 Words in Sch. 5 Pt. II repealed (1.4.2013 for specified purposes) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 14 Pt. 1](#); [S.I. 2013/358](#), art. 8(c), [Sch. 4](#) (with arts. 910Sch. 5)

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- F2** Words in Sch. 5 Pt. II s. F1 inserted (17.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 22(2)**, 72(4)(b); S.I. 2017/455, reg. 2(a)(ii)
- F3** Words in Sch. 5 Pt. II s. F1 inserted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 22(3)**, 72(4)(b); S.I. 2016/759, reg. 3(a)(ii)
- F4** Words in Sch. 5 Pt. II s. F1 inserted (17.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 23(2)**, 72(4)(b); S.I. 2017/455, reg. 2(b)(ii)
- F5** Words in Sch. 5 Pt. II s. F1 inserted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 24**, 72(4)(b); S.I. 2016/759, reg. 3(c)
- F6** Words in Sch. 5 Pt. II s. F1 inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 25**, 72(4)(b); S.I. 2016/759, reg. 4
- F7** Words in Sch. 5 Pt. II s. F1 substituted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 26**, 72(4)(b); S.I. 2016/759, reg. 3(d)
- F8** Words in Sch. 5 Pt. II s. F1 inserted (8.2.2019) by [Scotland Act 2016 \(c. 11\)](#), **ss. 27(2)**, 72(4)(b); S.I. 2018/1364, reg. 2
- F9** Words in Sch. 5 Pt. II s. F1 inserted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 28(2)**, 72(4)(b); S.I. 2016/759, reg. 3(e)
- F10** Words in Sch. 5 Pt. II s. F1 substituted (5.9.2016) by [Scotland Act 2016 \(c. 11\)](#), **ss. 23(3)**, 72(4)(b); S.I. 2016/759, reg. 3(b)(ii) (with saving in S.I. 2016/761, art. 2)
- F11** Words in Sch. 5 Pt. II s. F1 inserted (17.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 22(4)**, 72(4)(b); S.I. 2017/455, reg. 2(a)(ii)
- F12** Words in Sch. 5 Pt. II s. F1 omitted (17.5.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 23(4)**, 72(4)(b); S.I. 2017/455, reg. 2(b)(ii)
- F13** Words in Sch. 5 Pt. II s. F1 inserted (8.2.2019) by [Scotland Act 2016 \(c. 11\)](#), **ss. 27(3)**, 72(4)(b); S.I. 2018/1364, reg. 2

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- F2** Words in Sch. 5 Pt. II s. F1 inserted (17.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 22(2)**, 72(4)(b); S.I. 2017/455, reg. 2(a)(ii)
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F2. Child support

Section F2.

The subject-matter of the Child Support Acts 1991 and 1995.

Exception

The subject-matter of sections 1 to 7 of the Family Law (Scotland) Act 1985 (aliment).

Interpretation

If section 30(2) of the Child Support Act 1991 (collection of payments other than child support maintenance) is not in force on the principal appointed day, it is to be treated for the purposes of this reservation as if it were.

F3. Occupational and personal pensions

Section F3.

The regulation of occupational pension schemes and personal pension schemes, including the obligations of the trustees or managers of such schemes.

Provision about pensions payable to, or in respect of, any persons, except—

- (a) the persons referred to in section 81(3),
- (b) in relation to a Scottish public authority with mixed functions or no reserved functions, persons who are or have been a member of the public body, the holder of the public office, or a member of the staff of the body, holder or office.

The subject-matter of the Pensions (Increase) Act 1971.

Schemes for the payment of pensions which are listed in Schedule 2 to that Act, except those mentioned in paragraphs 38A and 38AB.

Where pension payable to or in respect of any class of persons under a public service pension scheme is covered by this reservation, so is making provision in their case—

- (a) for compensation for loss of office or employment, for their office or employment being affected by constitutional changes, or circumstances arising from such changes, in any territory or territories or for loss or diminution of emoluments, or
- (b) for benefits in respect of death or incapacity resulting from injury or disease.

Interpretation

“Pension” includes gratuities and allowances.

F4. War pensions

Section F4.

Schemes for the payment of pensions for or in respect of persons who have a disablement or have died in consequence of service as members of the armed forces of the Crown.

The subject-matter of any scheme under the Personal Injuries (Emergency Provisions) Act 1939, sections 3 to 5 and 7 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 or section 1 of the Polish Resettlement Act 1947

Illustration

The provision of pensions under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983.

Interpretation

“Pension” includes grants, allowances, supplements and gratuities.

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