
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

SOCIAL SECURITY

The Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022

Made - - - - 2022

Coming into force **

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 32(2), 52 and 79 of the Social Security (Scotland) Act 2018(a) and section 13 of the Social Security Act 1988(b) and all other powers enabling them to do so.

In accordance with section 96(2) of the Social Security (Scotland) Act 2018, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022 and come into force on [TBC].

(2) In these Regulations—

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- (a) 2018 asp 9.
 - (b) 1988 c. 7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and amended by section 27(5) of the Scotland Act 2016 (c. 11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with section 32 of the 2016 Act. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.
 - (c) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of Schedule 11 to that Act.

“the Best Start Foods Regulations” means the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019(a),

“the Best Start Grants Regulations” means the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(b), and

“the Scottish Child Payment Regulations” means the Scottish Child Payment Regulations 2020(c).

Amendment of the Best Start Grants Regulations

2.—(1) The Best Start Grants Regulations are amended in accordance with the following paragraphs.

(2) In regulation 9 (Meaning of being responsible for a child)—

(a) in paragraph (1)(c) after “section 54” insert “or section 54A”, and

(b) for paragraph (3) substitute—

“(3) For the purpose of paragraph (1)(g), an individual is a kinship carer for a child on a day if—

(a) the person is—

(i) a person who is related to the child,

(ii) a person who is known to the child and with whom the child has a pre-existing relationship, or

(iii) a friend or acquaintance of a person related to the child, and

(b) on that day, the child lives with the person (exclusively or predominantly) under the terms of—

(i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014(d),

(ii) a decision made under regulation 10(1) of the Looked After Children (Scotland) Regulations 2009(e), or

(iii) an agreement between the person, the person’s partner or both of them and—

(aa) a local authority by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995(f),

(bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989(g),

(cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25 of the Children (Northern Ireland) Order 1995(h).

(4) In paragraph (3)(a) “related” means related to the child either by blood, marriage or civil partnership.”

(3) In schedule 1 after paragraph 5 (Determination following backdated award of assistance) insert—

(a) S.S.I. 2019/193, amended by S.S.I. 2019/232, S.S.I. 2020/6, S.S.I. 2020/399, S.S.I. 2021/221 and S.S.I. 2021/320.

(b) S.S.I. 2018/370, amended by S.S.I. 2019/110, S.S.I. 2019/157, S.S.I. 2020/399, S.S.I. 2021/170, S.S.I. 2021/320, S.S.I. 2021/469 and S.S.I. 2021/494.

(c) S.S.I. 2020/351, amended by S.S.I. 2021/16, S.S.I. 2021/494 and S.S.I. 2022/41.

(d) 2014 asp 8.

(e) S.S.I. 2009/210. Regulation 10 is amended by S.S.I. 2013/47.

(f) 1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4), the Children’s Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2(4), the Children (Scotland) Act 2020 (asp 16), section 13 and S.S.I. 2013/211.

(g) 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

(h) S.I. 1995/755 (N.I. 2). Article 25 is amended by the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11), section 2(1).

“Determination following award of Scottish child payment

5A.–(1) The Scottish Ministers are to make a determination of an individual’s entitlement to an early learning grant or a school-age grant in connection with a child (without receiving an application) where the circumstances described in sub-paragraph (2) are met.

(2) The circumstances referred to in sub-paragraph (1) are that—

(a) a determination has been made that the individual is entitled to a Scottish child payment in respect of the child and the individual has an ongoing entitlement to that payment by virtue of regulation 19 of the Scottish Child Payment Regulations,

(b) the individual’s Scottish child payment in respect of the child is not currently suspended within the meaning of regulation 19G of the Scottish Child Payment Regulations, and

(c) it appears to the Scottish Ministers from the available information that the individual is likely to be entitled to an early learning grant or a school-age grant in respect of the child.

(3) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the determination is made.

(4) In this paragraph—

(a) “Scottish child payment” means Scottish child payment assistance given in accordance with the Scottish Child Payment Regulations,

(b) “Scottish Child Payment Regulations” means the Scottish Child Payment Regulations 2020(a), and

(c) “the available information” means—

(i) the information provided in the individual’s application for the Scottish child payment referred to in sub-paragraph (2)(a),

(ii) any other information obtained by the Scottish Ministers in connection with that application, and

(iii) any other information available to them that is relevant to their consideration of whether the individual is entitled to an early learning grant or a school-age grant.”.

(4) In paragraph 1 of schedule 2 (Eligibility)—

(a) in sub-paragraph (d)(iv) after “made;” insert “and”,

(b) in sub-paragraph (e)(iv)(bb) for “individual; and” substitute “individual.”, and

(c) omit sub-paragraph (f).

(5) In paragraph 6 of schedule 2 (The basic amount)—

(a) in sub-paragraph (2)(b)(v) for “responsible.” substitute “responsible,”,

(b) after sub-paragraph (2)(b)(v) insert—

“(vi) a child in the circumstance described in sub-paragraph (4), (5) or (6).”, and

(c) after sub-paragraph (3) insert—

“(4) The circumstance referred to in sub-paragraph (2)(b)(vi) is that—

(a) the individual to whom the grant is to be given is one of the following:

(i) a person who has leave to enter or remain in the United Kingdom granted under the immigration rules made under section 3(2) of the Immigration Act 1971(b) by virtue of—

(ia) the Afghan Relocations and Assistance Policy, or

(a) S.S.I. 2020/351, amended by S.S.I. 2021/16, S.S.I. 2021/494, and S.S.I. 2022/41.

(b) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are Rules 276BA1 – 276BS2.

- (ib) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
 - (ii) a person who has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-head (i),
 - (iii) a person who has leave granted under the Afghan Citizens Resettlement Scheme,
 - (iv) a person who has leave to enter or remain in the United Kingdom under the immigration rules made under section 3(2) of the Immigration Act 1971 by virtue of the Ukraine Scheme,
 - (v) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28th July 1951, as extended by article 1(2) of the Protocol relating to the status of refugees done at New York on 31st January 1967, or
 - (vi) a person who has humanitarian protection granted under the rules made under section 3(2) of the Immigration Act 1971, and
- (b) the child described in sub-paragraph (2)(b)(vi) was born before that individual arrived in the United Kingdom.
- (5) The circumstance referred to in sub-paragraph (2)(b)(vi) is that—
- (a) the child described in sub-paragraph (2)(b)(vi) was not, at the time of that child’s birth, a child of the individual to whom the grant is to be given (or, where the individual has a partner on the day the application is made, the individual’s partner), and
 - (b) the individual (or where the individual has a partner on the day the application is made, the individual’s partner) first became responsible for the child described in sub-paragraph (2)(b)(vi) when that child was more than 12 months old.
- (6) The circumstance referred to in sub-paragraph (2)(b)(vi) is that the individual to whom the grant is to be given was required to leave their home with the child described in sub-paragraph (2)(b)(vi) due to domestic abuse.
- (7) In this paragraph—
- “the Afghan Citizens Resettlement Scheme” has the same meaning as in paragraph (4),
- “domestic abuse” means abusive behaviour within the meaning of section 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021(a) by the individual’s partner,
- “the Ukraine Scheme” has the same meaning as in paragraph (4).”.
- (6) In paragraph 1 of schedule 3 (Eligibility)—
- (a) in sub-paragraph (e) after “made,” insert “and”,
 - (b) in sub-paragraph (f)(iv)(bb) for “individual, and” substitute “individual.”, and
 - (c) omit sub-paragraph (g).
- (7) In paragraph 1 of schedule 4 (Eligibility)—
- (a) in sub-paragraph (e) after “made,” insert “and”.
 - (b) in sub-paragraph (f)(iv)(bb) for “individual, and” substitute “individual.”, and
 - (c) omit sub-paragraph (g).

Amendment of the Best Start Foods Regulations

3.—(1) The Best Start Foods Regulations are amended in accordance with the following paragraphs.

(a) 2021 asp 16.

(2) In regulation 2 (General interpretation) for the definition of “kinship carer” substitute—

““kinship carer” means a person—

(a) who is—

- (i) related to the child,
- (ii) known to the child and with whom the child has a pre-existing relationship, or
- (iii) a friend or acquaintance of a person related to the child,

where “related” means related to the child either by blood, marriage or civil partnership, and

(b) with whom the child lives (exclusively or predominantly) under the terms of—

- (i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014(a),
- (ii) a decision made under regulation 10(1) of the Looked After Children (Scotland) Regulations 2009(b),
- (iii) an agreement between the person, the person’s partner or both of them and—
 - (aa) a local authority by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995(c),
 - (bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989(d),
 - (cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25 of the Children (Northern Ireland) Order 1995(e).”

(3) In regulation 4(1)(c) (Meaning of being “responsible” for a child) after “section 54” insert “or section 54A”.

Amendment of the Scottish Child Payment Regulations

4.—(1) The Scottish Child Payment Regulations are amended in accordance with paragraphs (2) to (12).

(2) For regulation 4 (References to the 2018 Act) substitute—

“Interpretation

4. In these Regulations—

“child” means a person under the age of 16,

““coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS CoV-2),

“the 2018 Act” means the Social Security (Scotland) Act 2018(f).”

(3) For regulation 11 (Meaning of “kinship carer”) substitute —

“11.—(1) A person is a kinship carer for a child on a day if—

(a) the person is—

- (i) a person who is related to the child,

(a) 2014 asp 8.

(b) S.S.I. 2009/210. Regulation 10 is amended by S.S.I. 2013/47.

(c) 1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4), the Children’s Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2(4), the Children (Scotland) Act 2020 (asp 16), section 13 and S.S.I. 2013/211.

(d) 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

(e) S.I. 1995/755 (N.I. 2). Article 25 is amended by the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11), section 2(1).

(f) 2018 asp 9.

- (ii) a person who is known to the child and with whom the child has a pre-existing relationship, or
- (iii) a friend or acquaintance of a person related to the child, and
- (b) on that day, the child lives with the person (exclusively or predominantly) under the terms of—
 - (i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014,
 - (ii) a decision made under regulation 10(1) of the Looked After Children (Scotland) Regulations 2009(a), or
 - (iii) an agreement between the person, the person’s partner or both of them and—
 - (aa) a local authority by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995(b),
 - (bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989(c),
 - (cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25 of the Children (Northern Ireland) Order 1995(d).

(2) In paragraph (1)(a) “related” means related to the child either by blood, marriage or civil partnership.”

(4) In regulation 18(b) (Eligibility for a Scottish child payment), for “under 6” substitute “under 16”.

(5) After regulation 18 (Eligibility for a Scottish child payment) insert—

“Beginning of entitlement to assistance

18A. Where a determination is made that an individual is entitled to a Scottish child payment, the date on which entitlement begins is the date on which the application is made or treated as made in accordance with regulation 5.”

(6) For regulation 20 (Value and form of a Scottish child payment), after paragraph (4) insert—

“(5) For each week in the period of 12 weeks ending with the death of the child, the amount of Scottish child payment that is to be given to the individual is the weekly rate, multiplied by two.”

(7) In regulation 21 (Time of payment), for paragraph (2), substitute—

“(2) Except where paragraph (3) applies, where a determination is made that an individual is entitled to Scottish child payment, the Scottish Ministers are to make—

- (a) the first payment of a Scottish child payment on a date specified in the determination, and
- (b) subsequent payments are made in the last week of each successive period of 4 weeks in which the individual continues to be entitled to a Scottish child payment for at least one week by virtue of regulation 19.”

(8) In paragraph 11(3) (Determination following award of a Scottish child payment in respect of another child) of the schedule—

- (a) in sub-sub-paragraph (b)—

(a) S.S.I. 2009/210. Regulation 10 is amended by S.S.I. 2013/47.
 (b) 1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4), the Children’s Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2(4), the Children (Scotland) Act 2020 (asp 16), section 13 and S.S.I. 2013/211.
 (c) 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.
 (d) S.I. 1995/755 (N.I. 2). Article 25 is amended by the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11), section 2(1).

- (i) before “such” insert “where the child is under 6 years old”, and
 - (ii) for “regulation 12(2)(a).” substitute “regulation 12(2)(a), or”.
- (b) after sub-sub-paragraph (b) insert—
- “(c) where the child is 6 years or older, such earlier day—
 - (i) not more than 4 weeks before that day on which the child was recognised to be a child for whom the individual has responsibility in terms of an award of assistance mentioned in regulation 12(2)(a), and
 - (ii) on or after [date of commencement].”
- (9) In paragraph 12(5) (Determination following cessation of award of a Scottish child payment) of the schedule—
- (a) for “the determination” substitute “the day on which the change of circumstances”,
 - (b) after “(3)” insert “occurred”.
- (10) In paragraph 34 (Re-determination and appeal deadlines) of the schedule, omit sub-paragraph (4).
- (11) In paragraph 35 (Timing of applications for Scottish child payment) of the schedule, omit sub-paragraph (4).

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (S.S.I. 2018/370) (“the Best Start Grants Regulations”), the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (S.S.I. 2019/193) (“the Best Start Foods Regulations”), and the Scottish Child Payment Regulations 2020 (S.S.I. 2020/351) (“the Scottish Child Payment Regulations”).

Amendments to the Best Start Grants Regulations

The Best Start Grants Regulations make provision about early years assistance, a type of assistance that is given by the Scottish Ministers under Part 2 of the Social Security (Scotland) Act 2018 (“the 2018 Act”).

Regulation 2(2) inserts a new definition of “kinship carer” and a reference to an order under section 54A of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”), in order to expand the meaning of being responsible for a child for the purposes of Best Start Grants.

Regulation 2(3) inserts a new provision, paragraph 5A, after paragraph 5 of schedule 1. This means that individuals who are awarded a Scottish Child Payment are entitled to be auto-awarded early learning grant or a school-age grant in connection with a child (without having to submit a separate application).

Regulations 2(4), 2(6) and 2(7) remove the eligibility requirement that the child is not living in a residential establishment as defined in section 202(1) of the Children’s Hearings (Scotland) Act 2011 on the day the application is made.

Regulation 2(5) inserts new categories of children under 16 years of age living in the same household as an individual who may be disregarded when calculating the value of an individual’s pregnancy and baby grant in respect of another child under paragraph 6 of schedule 2 of the Best Start Grants Regulations.

Amendments to the Best Start Foods Regulations

The Best Start Foods Regulations make provision for a scheme to provide benefits for pregnant women, mothers and children.

Regulation 3(2) inserts a new definition of “kinship carer” and regulation 3(3) inserts a reference to an order under section 54A of the 2008 Act in order to expand the meaning of being responsible for a child for the purposes of Best Start Foods. .

Amendments to the Scottish Child Payment Regulations

The Scottish Child Payment Regulations make provision about a Scottish child payment, a type of assistance that is given by the Scottish Ministers under section 79 of the 2018 Act.

Regulation 4(2) substitutes a new regulation 4 (interpretation) to insert definitions for a “child” and “coronavirus” for the purposes of Scottish Child Payment and regulation 4(3) inserts a new definition of “kinship carer”, to expand the meaning of being responsible for a child for the purposes of Scottish Child Payment. Regulations 4(10) and (11) remove the definition of “coronavirus” from paragraphs 34 and 35 of the schedule as a consequence of new regulation 4.

Regulation 4(4) amends the age criterion for the child in regulation 18.

Regulation 4(5) inserts new regulation 18A which makes provision for the beginning of an individual’s entitlement to assistance. Regulation 4(6) makes provision for an individual’s entitlement where the child has died.

Regulation 4(7) amends regulation 21 to provide that an individual's first payment of a Scottish child payment is to be made on a date specified in the determination, and any subsequent payment to be made 4 weekly in arrears.

Regulation 4(8) amends paragraph 11 of the schedule to auto-award individuals, in receipt of a Scottish Child Payment in respect of a child under 6 years old, another Scottish Child Payment in respect of a child aged 6-15 years old, without being required to submit a separate application.

Regulation 4(9) amends paragraph 12 of the schedule to change the date that the 12 week period in which Scottish Ministers must make a determination without application under that paragraph begins.