
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018

PART 2

Interpretation

Expressions about time and timing

When an application is to be treated as made

4.—(1) An application is to be treated as made—

- (a) on the day it is received by the Scottish Ministers; or
- (b) if applicable, on—
 - (i) the day chosen by the Scottish Ministers in accordance with paragraph (3); or
 - (ii) the day the applicant nominates (or is deemed to have nominated) under regulation 5.

(2) In a case where a determination is to be, or has been, made without an application (see Part 2 of schedule 1) references in these Regulations to the day the application is made are to be read as references to the day the determination is made.

(3) If, before making a determination on the basis of an application, the Scottish Ministers consider that the applicant—

- (a) would not be eligible for the assistance applied for if the application were treated as made on the day they received it; and
- (b) would be eligible for the assistance if the application were treated as made on a day falling within the period of 10 days beginning with the day they received it,

the Scottish Ministers may choose the day within that 10 day period on which the application is to be treated as made.

(4) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

- (a) made in the form; and
- (b) accompanied by the evidence,

required under section 38 of the Social Security (Scotland) Act 2018.

Late application: nomination of date

5.—(1) An applicant may nominate the date on which an application will be treated as made by virtue of regulation 4(1)(b)(ii) if—

- (a) the award of universal credit or assistance of a kind specified in regulation 11 that the applicant is relying on to meet the relevant eligibility condition is a backdated award;

- (b) the backdated award is an award of assistance for—
 - (i) a day that falls within the application window; or
 - (ii) a period that includes at least 1 day that falls within the application window; and
 - (c) the application is received by the Scottish Ministers—
 - (i) not more than 20 working days after the last day of the application window; and
 - (ii) within 3 months of the applicant being informed of the backdated award by or on behalf of the public authority who made it.
- (2) If the backdated award is for—
- (a) 1 day only; or
 - (b) a period and only 1 day of it falls within the application window,
- the applicant may only nominate that day under this regulation.
- (3) If—
- (a) the backdated award is for a period; and
 - (b) more than 1 day of the period falls within the application window,
- the applicant may nominate any of those days under this regulation.
- (4) If the applicant is entitled to nominate a day under this regulation but has not done so, the applicant is to be deemed to have nominated—
- (a) the only day the applicant could have nominated in accordance with paragraph (2); or
 - (b) the latest day the applicant could have nominated in accordance with paragraph (3).
- (5) In this regulation—
- “application window” means—
- (a) in relation to an application for a pregnancy and baby grant, the period that—
 - (i) begins on the day the child in question is born; and
 - (ii) ends with the deadline set by paragraph 2 of schedule 2;
- “backdated award” means an award of assistance for a day, or a period that begins on a day, that falls before the day the decision to make the award was taken;
- “the relevant eligibility condition” means—
- (a) in relation to an application for a pregnancy and baby grant, the eligibility condition in paragraph 1(e) of schedule 2;
- “working day” means a day other than—
- (a) a Saturday;
 - (b) a Sunday; or
 - (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(1).

Meaning of “birthday”, for children born on 29th February

6. In a non-leap year, the birthday of a child born on 29th February is to be taken to be 28th February.

(1) 1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays; it is amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

Calculations involving months

7.—(1) Where a day (“day 1”) is described as falling a specified number of months before or after another day (“day 2”), the date of day 1 is to be determined as follows.

(2) Count backwards or forwards (as the case may be) the specified number of months from the month in which day 2 falls.

(3) If the month arrived at in accordance with paragraph (2) has a day corresponding to day 2, day 1 is that day of the month arrived at.

(4) If the month arrived at in accordance with paragraph (2) has too few days to have a day corresponding to day 2, day 1 is the last day of the month arrived at(2).

Expressions about inter-personal relationships

Meaning of “partner”

8. An individual is to be regarded as the partner of another individual on a day only if, on that day, the two individuals would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012(3) (see section 39 of that Act(4)).

Meaning of being responsible for a child

9.—(1) An individual is to be regarded as responsible for a child on a day only if at least one of the following statements is true:—

- (a) the child is a dependant of the individual on the day in question;
- (b) the individual is one of the child’s parents and, on the day in question—
 - (i) normally lives with the child;
 - (ii) is under 20 years of age; and
 - (iii) is a dependant of another individual;
- (c) the child is, on the day in question, treated in law as the child of the individual by virtue of an order under section 54 of the Human Fertilisation and Embryology Act 2008(5);
- (d) the child is, on the day in question, treated in law as the child of the individual by reason of an adoption either—
 - (i) effected under the law of Scotland; or
 - (ii) effected under the law of another country or jurisdiction and recognised by the law of Scotland;
- (e) the child is, on the day in question, placed with the individual by an adoption agency;
- (f) the individual is, on the day in question, a guardian of the child appointed by deed, will or by a court;
- (g) the individual is, on the day in question, a kinship carer for the child.

(2) In paragraph (1)(e), “adoption agency” means—

(2) For example, if a child is born on 31st August, the day falling 6 months after the day the child is born is 28th February (or 29th February in a leap year).

(3) 2012 c.5.

(4) Section 39 is amended by S.I. 2014/3229

(5) 2008 c.22. Section 54 is amended by the Crime and Courts Act 2013 (c.22), schedule 11, paragraph 206 and the Justice Act (Northern Ireland) 2015 (c.9), schedule 9, Part 1, paragraph 1.

- (a) a local authority acting in its capacity as an adoption service provider under section 1 of the Adoption and Children (Scotland) Act 2007(6);
 - (b) an adoption service provided as mentioned in paragraph 8(1)(b) of schedule 12 of the Public Services Reform (Scotland) Act 2010(7) and registered under Part 5 of that Act;
 - (c) an adoption agency within the meaning of section 2(1) of the Adoption and Children Act 2002(8);
 - (d) an adoption agency within the meaning of article 3 of the Adoption (Northern Ireland) Order 1987(9).
- (3) For the purpose of paragraph (1)(g), an individual is a kinship carer for a child on a day if—
- (a) the individual is a qualifying person in relation to the child within the meaning of section 72(2) of the Children and Young People (Scotland) Act 2014(10), and
 - (b) on the day in question, the child lives with the individual (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, or
 - (ii) an agreement between the individual, the individual’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(11);
 - (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(12); or
 - (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(13).

Meaning of “dependant”

10.—(1) An individual (“person A”) is to be regarded as the dependant of another individual (“person B”) on a day only if—

- (a) person B has been awarded—
 - (i) child tax credit or child benefit for the day in question (or for a period that includes that day); or
 - (ii) universal credit for—
 - (aa) the assessment period that includes the day in question; or
 - (bb) the assessment period that ended immediately before the assessment period mentioned in paragraph (aa) started; and
- (b) person A is recognised to be a dependant of person B in the terms of that award of assistance.

(6) 2007 asp 4.

(7) 2010 asp 8.

(8) 2002 c.38.

(9) S.I. 1987/2203. Article 3 is amended by the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c.11), section 7, the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1), schedule 6, paragraph 1(1)(d), S.I. 1994/429 and S.I. 2003/431.

(10) 2014 asp 8.

(11) 1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4) and by the Children’s Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2(4) and by S.S.I. 2013/211.

(12) 1989 c. 41. Section 105(4) is substituted by S.I. 2016/413.

(13) 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).

(2) It is immaterial for the purpose of this regulation that the award of assistance to person B does not include any amount in respect of person A due to a rule that restricts the number of dependants in respect of whom person B can be given that type of assistance.

Expressions about social security assistance

Meaning of references to specified kinds of assistance

11. References in these Regulations to a kind of assistance specified in this regulation are to the following:—

- (a) child tax credit;
- (b) housing benefit;
- (c) income-based jobseeker’s allowance;
- (d) income-related employment and support allowance;
- (e) income support;
- (f) state pension credit;
- (g) working tax credit.

Meaning of references to assistance being awarded

12.—(1) An individual is not to be regarded as having been awarded a kind of assistance for a day or a period if—

- (a) the award was made in error (whether or not induced by the individual); or
- (b) the sum awarded to the individual for the day or the period is £0.

(2) In sub-paragraph (1)(b), the reference to “the sum awarded” means, in a case where a deduction has been made—

- (a) in respect of any liability the individual has to another person; or
- (b) by way of a sanction,

the sum that would have been awarded had the deduction not been made.

(3) For the avoidance of doubt, in sub-paragraph (1) “kind of assistance” includes universal credit as well as the kinds of assistance specified in regulation 11.

Meaning of “assessment period” in relation to universal credit

13. “Assessment period” means a period in respect of which universal credit may be payable to the individual in question in accordance with section 7 of the Welfare Reform Act 2012(14).