

*Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

**SOCIAL SECURITY**

**The Social Security (Miscellaneous Amendment and  
Transitional Provision) (Scotland) Regulations 2022**

Made - - - - 2022

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(1), sections 64(1), 70(4) and 71(6) of the Social Security Contributions and Benefits Act 1992(2), section 77(3) of the Welfare Reform Act 2012(3), sections 28(2), 31(2), 32(2), 52, 79 and 95 of the Social Security (Scotland) Act 2018(4), and all other powers enabling them to do so(5).

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- (1) 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) (“the 1998 Act”) as read with section 32 of the 2016 Act.
  - (2) 1992 c. 4. The functions of the Secretary of State to make regulations to amend the qualifying conditions for disability and carer benefits were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act as read with section 22(2) and section 32 of the 2016 Act. Section 22(2) of the 2016 Act inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act relating to carers’ and disability benefits. Section 22(2) was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which provided that pre-commencement functions would not transfer to the Scottish Ministers until the occurrence of a specified event or date. Section 32 was brought into force on 5 September 2016 by S.I. 2016/759. The transitional arrangements in respect of carers’ benefits were ended by the commencement of section 81 of the Social Security (Scotland) Act 2018 (asp 9) on 3 September 2018 (see S.S.I. 2018/250). The transitional arrangements in respect of disability benefits ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 22(2) and 32 are exercisable within devolved competence for these benefits, they are now exercisable by the Scottish Ministers instead of by the Secretary of State. There are amendments to section 64(1) of the Social Security Contributions and Benefits Act 1992 but none are relevant to these Regulations.
  - (3) 2012 c. 5. The functions of the Secretary of State under sections 77 and 94 of the Welfare Reform Act 2012 (“the 2012 Act”), as regards Scotland, transferred to the Scottish Ministers on 1 April 2020. Legislative competence for disability benefits was devolved to the Scottish Parliament by section 22(2) of the 2016 Act, which inserted exceptions into the social security reservation in Head F1 of Part 2 of schedule 5 of the 1998 Act. Section 22(2) of the 2016 Act was brought into force on 17 May 2017 by S.I. 2017/455, subject to transitional arrangements set out in S.I. 2017/444 which modified the operation of section 53 of the 1998 Act. Section 32 of the Scotland Act 2016 provides the meaning of “pre-commencement enactment” in this context. The transitional arrangements in respect of disability benefits, including personal independence payments, ended on 31 March 2020 (see regulation 4 of S.I. 2017/444). Accordingly, in so far as the functions under sections 77 and 94 are exercisable within devolved competence, they are now exercisable by the Scottish Ministers. Under section 172(1) of the Social Security Administration Act 1992, the Secretary of State is required to refer to the Social Security Advisory Committee (SSAC) proposals for regulations under “relevant enactments”, as defined in section 170(5) of that Act. This includes regulations under Part 4 of the 2012 Act. As a result of section 33(1) of the 2016 Act, the function of the Secretary of State to consult the SSAC has not transferred to the Scottish Ministers. There is therefore no requirement for the Scottish Ministers to consult the SSAC before making these Regulations.
  - (4) 2018 asp 9.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the Welsh Ministers<sup>(6)</sup>.

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.

### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 and, with the exception of regulation 2(3), come into force on 14 November 2022.

(2) Regulation 2(3) of these Regulations comes into force on 28 November 2022.

(3) These Regulations extend to Scotland only.

### Amendment of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018

2.—(1) The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018<sup>(7)</sup> are amended in accordance with paragraphs (2) to (6).

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

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

(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 individual 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 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<sup>(8)</sup>,

(ii) any other order under section 11(1) of the Children (Scotland) Act 1995 (“the 1995 Act”)<sup>(9)</sup>, or

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(5) 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.

(6) 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.

(7) 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, S.S.I. 2021/494, S.S.I. 2022/108 and S.S.I. 2022/129.

(8) 2014 asp 8.

(9) 1995 c. 36.

- (iii) 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 1995 Act<sup>(10)</sup>,
    - (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 (“the 1989 Act”)<sup>(11)</sup>, 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 (“the 1995 Order”)<sup>(12)</sup>.
  - (4) A person described in paragraph (3)(a) must not be—
    - (a) the parent of the child within the meaning of section 15(1) of the 1995 Act,
    - (b) a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009<sup>(13)</sup>,
    - (c) a local authority foster parent in England and Wales within the meaning of section 105(1) of the 1989 Act, or
    - (d) an authority foster parent in Northern Ireland within the meaning of article 27(3) of the 1995 Order.
  - (5) In paragraph (3)(a) “related” means related either by blood, marriage or civil partnership.”.
- (3) In schedule 1 (procedural matters), Part 2 (determination without application), after paragraph 5 (determination following backdated award of assistance) insert—

**“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(a) 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.

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<sup>(10)</sup> Section 17(6) was amended by paragraph 9(4) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), paragraph 2(4) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1), and S.S.I. 2013/211.

<sup>(11)</sup> 1989 c. 41. Section 105(4) was substituted by S.I. 2016/413.

<sup>(12)</sup> S.I. 1995/755 (N.I. 2). Article 25 was amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11).

<sup>(13)</sup> S.S.I. 2009/210, to which there are amendments not relevant to these Regulations.

- (4) Where an individual who is entitled to a Scottish child payment requests that the Scottish Ministers do not make a determination (without receiving an application) of the individual's entitlement to an early learning grant or school-age grant—
- (a) the Scottish Ministers are not to make a determination (without receiving an application) under sub-paragraph (1), and
  - (b) accordingly, their duty to do so under sub-paragraph (1) ceases to apply.
- (5) 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(14), and
  - (c) “the available information” means—
    - (i) the information provided in the individual's application for the Scottish child payment,
    - (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 schedule 2 (pregnancy and baby grant)—
- (a) in paragraph 1 (eligibility)—
    - (i) at the end of sub-paragraph (d)(iv) insert “and”,
    - (ii) at the end of sub-paragraph (e)(iv)(bb) omit “and”, and
    - (iii) omit sub-paragraph (f),
  - (b) in paragraph 4 (residence requirement)—
    - (i) in sub-paragraph (2)(ab)(i) before “leave” insert “has”,
    - (ii) at the end of sub-paragraph (2)(ac)(i) omit “or”,
    - (iii) at the end of sub-paragraph (2)(ac)(ii) for “;” substitute “, or”, and
    - (iv) after sub-paragraph (2)(ac)(ii) insert—
 

“(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,”,
  - (c) in paragraph 6 (the basic amount)—
    - (i) for sub-paragraph (2)(b)(v) substitute—
 

“a child for whom neither the individual nor their partner is responsible,”,
    - (ii) after sub-paragraph (2)(b)(v) insert—
 

“(vi) a child in any one of the circumstances described in sub-paragraph (4), (5) or (6)”, and
    - (iii) after sub-paragraph (3) insert—
 

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

      - (a) the child mentioned in sub-paragraph (2)(b)(vi) was, at the time of that child's birth, not a child of the—

- (i) individual to whom the grant is to be given, or
- (ii) individual's partner (where the individual has a partner on the day the application is made), and
- (b) the individual first became responsible for the child mentioned in sub-paragraph (2)(b)(vi) when that child was aged 12 months or older.
- (5) The circumstance referred to in sub-paragraph (2)(b)(vi) is that the individual to whom the grant is to be given has left their home with the child mentioned in sub-paragraph (2)(b)(vi) due to domestic abuse.
- (6) The circumstance referred to in sub-paragraph (2)(b)(vi) is that—
  - (a) the child mentioned in sub-paragraph (2)(b)(vi) was born before the individual to whom the grant is to be given arrived in the United Kingdom, and
  - (b) 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(15) (“the 1971 Act”) by virtue of—
      - (aa) the Afghan Relocations and Assistance Policy, or
      - (bb) 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 with leave to enter or remain in the United Kingdom granted under or outside the immigration rules made under section 3(2) of the 1971 Act, or with a right of abode in the United Kingdom within the meaning of section 2 of that Act or who does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of the Act, where the person—
      - (aa) was residing in Ukraine immediately before 1 January 2022, and
      - (bb) left Ukraine in connection with the Russian invasion which took place on 24 February 2022,
    - (v) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28 July 1951, as extended by article 1(2) of the Protocol relating to the status of refugees done at New York on 31 January 1967, or
    - (vi) a person who has humanitarian protection granted under the rules made under section 3(2) of the 1971 Act.
- (7) In paragraph (6) “the Afghan Citizens Resettlement Scheme” has the same meaning as in paragraph 4.”,
- (d) after paragraph 10 (meaning of “sure start maternity grant”) insert—

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(15) 1971 c. 77. See Part 7 of the Immigration Rules; the relevant rules are rules 276BA1 – 276BS2.

**“Meaning of “domestic abuse”**

11.—(1) Subject to sub-paragraph (3), in this schedule, “domestic abuse” means abusive behaviour within the meaning of sections 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021(16) (“the 2021 Act”).

(2) For the purposes of this schedule, sections 2 and 3 of the 2021 Act apply as if—

- (a) references to “person A” were references to the partner or the ex-partner of the individual to whom the grant is to be given, and
- (b) references to “person B” were references to the individual to whom the grant is to be given.

(3) Sub-paragraphs (4) to (13) have effect until the day on which sections 2 and 3 of the 2021 Act come into force.

(4) “Abusive behaviour” means behaviour by the partner or ex-partner of the individual to whom the grant is to be given (“person A”) which is abusive of the individual to whom the grant is to be given (“person B”).

(5) Behaviour by person A is abusive of person B if a reasonable person would consider the behaviour to be likely to cause person B to suffer physical or psychological harm.

(6) Behaviour is behaviour of any kind, including (for example)—

- (a) saying or otherwise communicating as well as doing something,
- (b) intentionally failing—
  - (i) to do something,
  - (ii) to say or otherwise communicate something.

(7) Behaviour directed at a person is such behaviour however carried out, including (in particular)—

- (a) by way of conduct towards property,
- (b) through making use of a third party,

as well as behaviour in a personal or direct manner.

(8) In sub-paragraph (5), the reference to psychological harm includes fear, alarm and distress.

(9) Behaviour may consist of a single incident or a course of conduct.

(10) Behaviour which is abusive of person B includes (in particular)—

- (a) behaviour directed at person B that is violent, threatening or intimidating,
- (b) behaviour directed at person B, at a child of person B or at another person that either—
  - (i) has its purpose (or among its purposes) one or more of the relevant effects set out in sub-paragraph (11), or
  - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in sub-paragraph (11).

(11) The relevant effects are of—

- (a) making person B dependent on, or subordinate to, person A,
- (b) isolating person B from friends, relatives or other sources of support,

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(16) 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, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/129 and S.S.I. 2022/167.

- (c) controlling, regulating or monitoring person B’s day-to-day activities,
- (d) depriving person B of, or restricting person B’s, freedom of action,
- (e) frightening, humiliating, degrading or punishing person B.

(12) In sub-paragraph (10)(a), the reference to violent behaviour includes sexual violence as well as physical violence.

(13) Person A and person B are partners (and “ex-partners” is to be construed accordingly) if they are—

- (a) spouses or civil partners of each other, or
- (b) in an intimate personal relationship with each other.”.

(5) In schedule 3 (early learning grant)—

(a) in paragraph 1 (eligibility)—

- (i) at the end of sub-paragraph (e) insert “and”,
- (ii) at the end of sub-paragraph (f)(iv)(bb) omit “and”, and
- (iii) omit sub-paragraph (g), and

(b) in paragraph 3 (residence requirement)—

- (i) at the end of sub-paragraph (2)(ac)(i) omit “or”,
- (ii) at the end of sub-paragraph (2)(ac)(ii) substitute “;” for “, or”,
- (iii) after sub-paragraph (2)(ac)(ii) insert—

“(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,”.

(6) In schedule 4 (school-age grant)—

(a) in paragraph 1 (eligibility)—

- (i) at the end of sub-paragraph (e) insert “and”,
- (ii) at the end of sub-paragraph (f)(iv)(bb) omit “and”, and
- (iii) omit sub-paragraph (g), and

(b) in paragraph 4 (residence requirement)—

- (i) at the end of sub-paragraph (2)(ac)(i) omit “or”,
- (ii) at the end of sub-paragraph (2)(ac)(ii) insert “or”,
- (iii) after sub-paragraph (2)(ac)(ii) insert—

“(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act,”.

### **Amendment of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019**

**3.—(1)** The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019<sup>(17)</sup> are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (general interpretation), omit—

- (a) the definition of “kinship carer”, and
- (b) the word “and” immediately following the definition.

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<sup>(17)</sup> 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, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/129 and S.S.I. 2022/167.

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

(4) After regulation 5 (meaning of “dependant”) insert—

**“Meaning of “kinship carer”**

**5A.**—(1) An individual is a kinship carer for a child on a day if—

- (a) the individual 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 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,
  - (ii) any other order under section 11(1) of the Children (Scotland) Act 1995<sup>(18)</sup> (“the 1995 Act”), or
  - (iii) 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 1995 Act<sup>(19)</sup>,
    - (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<sup>(20)</sup> (“the 1989 Act”), 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<sup>(21)</sup> (“the 1995 Order”).

(2) A person described in paragraph (1)(a) must not be—

- (a) the parent of the child within the meaning of section 15(1) of the 1995 Act,
- (b) a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009<sup>(22)</sup>,
- (c) a local authority foster parent in England and Wales within the meaning of section 105(1) of the 1989 Act, or
- (d) an authority foster parent in Northern Ireland within the meaning of article 27(3) of the 1995 Order.

(3) In paragraph (1)(a) “related” means related either by blood, marriage or civil partnership.”.

(5) In regulation 9(2)(ac) (residence requirement)—

- (a) at the end of head (i) omit “or”,

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<sup>(18)</sup> 1995 c. 36.

<sup>(19)</sup> Section 17(6) was amended by paragraph 9(4) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), paragraph 2(4) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1), and S.S.I. 2013/211.

<sup>(20)</sup> 1989 c. 41. Section 105(4) is substituted by S.I. 2016/413.

<sup>(21)</sup> 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).

<sup>(22)</sup> S.S.I. 2009/210, to which there are amendments not relevant to these Regulations.



- (b) at the end of head (ii) insert “or”,
- (c) after head (ii) insert—
  - “(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”.
- (6) For regulation 10(1)(h) (kinds of assistance)(**23**) substitute—
  - “(h) universal credit, where—
    - (i) the person is a single claimant of universal credit and has an earned income of £660 or less, or
    - (ii) the person is one of joint claimants of universal credit and the joint claimants have combined earned income of £660 or less, in the period specified in paragraph (2)”.

### **Amendment of the Scottish Child Payment Regulations 2020**

- 4.—(1) The Scottish Child Payment Regulations are amended in accordance with paragraphs (2) to (8).
- (2) For regulation 4 (references to the 2018 Act) substitute—

#### **“Interpretation**

- 4. In these Regulations—
  - “the 2018 Act” means the Social Security (Scotland) Act 2018(**24**),
  - “child” means a person under the age of 16, and
  - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS CoV-2).”.
- (3) For regulation 11 (meaning of “kinship carer”), substitute—
  - “**11.**—(1) An individual is a kinship carer for a child on a day if—
    - (a) the individual 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 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,
      - (ii) any other order under section 11(1) of the Children (Scotland) Act 1995 (“the 1995 Act”)(**25**), or
      - (iii) an agreement between the individual, the individual’s partner or both of them and—

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(23) Regulation 10(1)(h) was amended by [S.S.I. 2022/129](#).

(24) 2018 asp 9.

(25) 1995 c. 36.

- (aa) a local authority by which the child is looked after within the meaning of section 17(6) of the 1995 Act<sup>(26)</sup>,
  - (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 (“the 1989 Act”)<sup>(27)</sup>, 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 (“the 1995 Order”)<sup>(28)</sup>.
- (2) A person described in paragraph (1)(a) must not be—
- (a) the parent of the child within the meaning of section 15(1) of the 1995 Act,
  - (b) a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009<sup>(29)</sup>,
  - (c) a local authority foster parent in England and Wales within the meaning of section 105(1) of the 1989 Act, or
  - (d) an authority foster parent in Northern Ireland within the meaning of article 27(3) of the 1995 Order.
- (3) In paragraph (1)(a) “related” means related either by blood, marriage or civil partnership.”
- (4) In regulation 18(b) (eligibility for a Scottish child payment), for “6” substitute “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) In regulation 20 (value and form of a Scottish child payment)—
- (a) in paragraph (1) for “£20” substitute “£25”,
  - (b) 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) For regulation 21(2) (time of payment) substitute—
- “(2) Except where paragraph (3) applies, where a determination is made that an individual is entitled to a 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 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 the schedule (procedural matters)—

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<sup>(26)</sup> 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.

<sup>(27)</sup> 1989 c. 41. Section 105(4) is substituted by S.I. 2016/413.

<sup>(28)</sup> 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).

<sup>(29)</sup> S.S.I. 2009/210, to which there are amendments not relevant to these Regulations.

- (a) in paragraph 11(3) (determination following award of a Scottish child payment in respect of another child)—
    - (i) in head (b), at the beginning insert “where the child is under 6 years old”, and
    - (ii) at the end of head (b) insert “or”,
    - (iii) after head (b) insert—
      - “(c) where the child is 6 years old or older, such earlier day which is—
        - (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 14 November 2022.”,
  - (b) in paragraph 12(5) (determination following cessation of award of a Scottish child payment)—
    - (i) for “the determination” substitute “the day on which the change of circumstances”,
    - (ii) after “(3)” insert “occurred”,
  - (c) in paragraph 34 (re-determination and appeal deadlines), omit sub-paragraph (4), and
  - (d) in paragraph 35 (timing of applications for Scottish child payment), omit sub-paragraph (4).
- (9) In this regulation and in regulation 5 “the Scottish Child Payment Regulations” means the Scottish Child Payment Regulations 2020(30).

#### **Transitional and consequential provision in connection with regulation 4**

5.—(1) Any application for a Scottish child payment under the Scottish Child Payment Regulations in respect of a child who is aged 6 years old or older which is made before 14 November 2022 is to be treated for the purposes of those Regulations as having been made on 14 November 2022.

(2) Where the Scottish Ministers make a determination without receiving an application by virtue of Part 2 of the schedule of the Scottish Child Payment Regulations that an individual is entitled to a Scottish child payment in respect of—

- (a) a period that includes one or more days falling before 14 November 2022, and
- (b) a child who reached the age of 6 before that date,

the individual’s entitlement begins on 14 November 2022.

(3) In the case of any application to which paragraph (1) applies, regulation 18A of the Scottish Child Payment Regulations is to be read as though, for the words from “begins” to the end there were substituted “begins is 14 November 2022”.

(4) In the case of any determination to which paragraph (2) applies, regulation 18A of the Scottish Child Payment Regulations does not apply.

(5) For the purposes of paragraph (1), an application is “made” on the date it is received by the Scottish Ministers.

#### **Amendment of disability and carer’s benefit legislation**

6.—(1) In paragraph (1)(f) in the provisions specified in paragraph 2(a) to (d)—

- (a) for “or a right” substitute “a right”,

- (b) after “1971” insert “, or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.
- (2) Those provisions are—
- (a) regulation 9C of the Social Security (Invalid Care Allowance) Regulations 1976<sup>(31)</sup>,
  - (b) regulation 2C of the Social Security (Attendance Allowance) Regulations 1991<sup>(32)</sup>,
  - (c) regulation 2C of the Social Security (Disability Living Allowance) Regulations 1991<sup>(33)</sup>, and
  - (d) regulation 23A of the Social Security (Personal Independence Payment) Regulations 2013<sup>(34)</sup>.

### **Amendment of the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019**

7. In regulation 8(2) of the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 (conditions relating to residence)<sup>(35)</sup>—
- (a) in sub-paragraph (ab)(i) omit “or”,
  - (b) at the end of sub-paragraph (ab)(ii) insert “or”,
  - (c) after sub-paragraph (ab)(ii) insert—
    - “(iii) does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act.”.

### **Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**

8. In regulation 5(10A)(f) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (residence and presence conditions)<sup>(36)</sup>—
- (a) for “or a right” substitute “has a right”, and
  - (b) after “1971” insert “or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

### **Amendment of the Disability Assistance for Working Age People (Scotland) Regulations 2022**

9. In regulation 15(7)(d) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (residence and presence conditions)<sup>(37)</sup>—
- (a) for “or a right” substitute “has a right”, and
  - (b) after “1971” insert “or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act”.

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(31) S.I. 1976/409. Regulation 9C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.S.I. 2022/108.

(32) S.I. 1991/2740. Regulation 2C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.S.I. 2022/108.

(33) S.I. 1991/2890. Regulation 2C is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.S.I. 2022/108.

(34) S.I. 2013/377. Regulation 23A is inserted by S.I. 2017/1015. Paragraph (1A) is inserted by S.I. 2021/1034 and amended by S.S.I. 2022/108.

(35) S.S.I. 2019/324. Regulation (8)(2)(ab) is inserted by S.S.I. 2022/108.

(36) S.S.I. 2021/174. Regulation (5)(10A)(f) is inserted by S.S.I. 2022/108.

(37) S.S.I. 2022/54. Regulation (15)(7)(d) is inserted by S.S.I. 2022/108.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the following instruments (“low-income benefit legislation”):

- the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (“the Best Start Grants Regulations”),
- the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (“the Best Start Foods Regulations”), and
- the Scottish Child Payment Regulations 2020 (“the Scottish Child Payment Regulations”).

These Regulations also make amendments to the following instruments (“the disability and carer’s benefit legislation”):

- the Social Security (Invalid Care Allowance) Regulations 1976,
- the Social Security (Attendance Allowance) Regulations 1991,
- the Social Security (Disability Living Allowance) Regulations 1991,
- the Social Security (Personal Independence Payment) Regulations 2013,
- the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019,
- the Disability Assistance for Children and Young People (Scotland) Regulations 2021, and
- the Disability Assistance for Working Age People (Scotland) Regulations 2022.

### Amendments to the Best Start Grants Regulations

The Best Start Grants Regulations make provision about early years assistance that is given by the Scottish Ministers under 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.

Regulation 2(3) provides 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), unless they opt-out of the auto-award process.

Regulations 2(4)(a), 2(5)(a) and 2(6)(a) remove the eligibility requirement that the child is not living in a residential establishment on the day the application is made.

Regulation 2(4)(c) 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. This includes individuals who 1) have had to leave their home with a child/children due to domestic abuse from their partner or ex-partner, 2) have arrived in Scotland with a child/children as a refugee, to seek humanitarian protection, or with leave under the Afghanistan resettlement schemes or the Ukraine resettlement, or 3) have taken on responsibility for a child/children that is not their own when that child/children was more than 12 months old. Regulation 2(4)(d) inserts a definition of domestic abuse to be used until such time that sections 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021 come into force.

### 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) and (4) removes and replaces the existing definition of “kinship carer” with a new definition to expand the meaning of being responsible for a child. Regulation 3(3) inserts 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.

Regulation 3(6) makes a technical amendment to correct a minor drafting error.

#### 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” into the Scottish Child Payment Regulations. Regulations 4(8)(c) and (d) remove the definition of “coronavirus” from paragraphs 34 and 35 of the schedule as a consequence of new regulation 4.

Regulation 4(3) inserts a new definition of “kinship carer”, to expand the meaning of being responsible for a child for the purposes of the Scottish Child Payment Regulations.

Regulation 4(4) amends the maximum age of the child for whom an individual must be responsible to be eligible for a Scottish child payment in regulation 18.

Regulation 4(5) inserts new regulation 18A. New regulation 18A makes provision for the beginning of an individual’s entitlement to assistance.

Regulation 4(6) increases the value of a Scottish child payment per week and 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)(a) amends paragraph 11 of the schedule to impose a duty on Scottish Ministers to make a determination, without having received an application, that an individual who is in receipt of a Scottish child payment in respect of a child under 6 years old is entitled to another Scottish child payment in respect of a child aged 6-15 years old.

Regulation 4(8)(b) 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.

Regulation 5 sets out transitional and consequential provision in relation to the Scottish Child Payment Regulations.

#### Amendments relating to an individual’s residence

Regulations 2(4)(b), 2(5)(b), 2(6)(b), 3(5), 6, 7, 8 and 9 make amendments to the disability and carer’s benefit legislation, the Best Start Grants Regulations and the Best Start Foods Regulations so that persons who do not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of the Immigration Act 1971 (c. 77), notably Irish citizens, may access assistance under the low-income benefit legislation or disability and carer’s benefit legislation, upon arrival in Scotland from Ukraine.