
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 351

The Scottish Child Payment Regulations 2020

PART 1

Introduction

Citation

1. These Regulations may be cited as the Scottish Child Payment Regulations 2020.

Commencement

2. These Regulations come into force on the first Monday after the day on which they are made.

Overview

- 3.—(1) Part 2 makes provision about the interpretation of these Regulations.
(2) Part 3 makes provision about eligibility and the assistance that is to be given to eligible individuals in connection with having responsibility for a child (referred to in these Regulations as a “Scottish child payment”).
(3) Part 4 makes transitory provision.
(4) The schedule makes provision about matters of procedure for applying for, and determining entitlement to, a Scottish child payment.

PART 2

Interpretation

General

References to the 2018 Act

4. In these Regulations “the 2018 Act” means the Social Security (Scotland) Act 2018(1).

*Expressions about time and timing***When an application is to be treated as made**

5. A reference to the day on which an application is made means the day on which an application is received by the Scottish Ministers or, as the context may require, the day on which the application is treated as having been made by virtue of regulation 25 or the schedule.

Meaning of “working day”

6. A “working day” means a day other than—
- (a) a Saturday,
 - (b) a Sunday, or
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(2).

Calculation of the age of a child born on 29 February

7. When calculating the age of a child born on 29 February for the purposes of these Regulations, in a non-leap year the birthday of the child is to be taken to be 28 February.

Meaning of “week”

8. A “week” means a period of 7 days.

*Expressions about inter-personal relationships***Meaning of being responsible for a child**

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

- (a) the child is a dependant of the individual on that day,
- (b) the child is a dependant of the individual’s partner on that day.

Meaning of “partner”

10. A person (“A”) is the partner of another person (“B”) on a day only if, on that day, A and B 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 “kinship carer”

11. A person is a kinship carer for a child on a day if—
- (a) the person 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(5), and

(2) 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.

(3) 2012 c.5.

(4) Section 39 is amended by S.I. 2014/3229 and S.I. 2019/1458.

(5) 2014 asp 8.

- (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, or
 - (ii) 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(6),
 - (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(7), 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(8).

Meaning of “dependant”

12.—(1) A child is to be regarded as a dependant of a person on a day only if—

- (a) paragraph (2) applies, or
- (b) on that day the person is a kinship carer for the child.

(2) This paragraph applies if—

- (a) the person has been awarded—
 - (i) child tax credit, child benefit or state pension credit for the day in question (or for a period that includes that day), or
 - (ii) universal credit for an assessment period that includes the day in question, and
- (b) the child is recognised to be a child for whom the person has responsibility in terms of that award of assistance.

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

Expressions about social security assistance

Meaning of determination of entitlement to a Scottish child payment

13.—(1) Unless the context otherwise requires, references in these Regulations to a determination of an individual’s entitlement to a Scottish child payment are to a determination made—

- (a) by the Scottish Ministers—
 - (i) under paragraph 3 of the schedule, or
 - (ii) (following a request for a re-determination) under paragraph 16 of the schedule,
- (b) by the First-Tier Tribunal for Scotland—
 - (i) under paragraph 22 of the schedule in an appeal against a determination made by the Scottish Ministers, or
 - (ii) (subsequent to such an appeal) under its Tribunals Act powers,

(6) 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) and S.S.I. 2013/211.

(7) 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

(8) 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).

- (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or following a review of, a decision of the First-tier Tribunal).
- (2) In this regulation, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014⁽⁹⁾.
- (3) A determination of an individual’s entitlement to a Scottish child payment consists of—
- (a) a decision about whether or not the eligibility rules specified in regulation 18 are satisfied in the individual’s case,
 - (b) if those rules are satisfied, a decision (taken in accordance with these Regulations) about what assistance the individual is entitled to be given, and
 - (c) if the determination is to be made on the basis that the individual has ongoing entitlement to a Scottish child payment, a decision about what assistance the determination is to entitle the individual to be given in the future.

Meaning of references to specified kinds of assistance

14. For the purposes of these Regulations, references to a kind of assistance specified in this regulation are to—

- (a) child tax credit under the Tax Credits Act 2002⁽¹⁰⁾,
- (b) income-based jobseeker’s allowance under the Jobseekers Act 1995⁽¹¹⁾,
- (c) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007⁽¹²⁾,
- (d) income support under Part VII of the Social Security Contributions and Benefits Act 1992⁽¹³⁾,
- (e) state pension credit under the State Pension Credit Act 2002⁽¹⁴⁾,
- (f) universal credit under Part 1 of the Welfare Reform Act 2012⁽¹⁵⁾,
- (g) working tax credit under the Tax Credits Act 2002⁽¹⁶⁾.

Meaning of references to assistance being awarded

15.—(1) An individual is not to be regarded as having been awarded a kind of assistance specified in regulation 14 for a day or a period if the award was made in error (whether or not induced by the individual).

(2) For the avoidance of doubt, an individual is to be regarded as having been awarded assistance for a day or period even if the sum awarded is reduced to £0 as a result of a sanction.

Meaning of “assessment period” in relation to universal credit

16. “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.

(9) 2014 asp 10.
 (10) 2002 c.21.
 (11) 1995 c.18.
 (12) 2007 c.5.
 (13) 1992 c.4.
 (14) 2002 c.16.
 (15) 2012 c.5.
 (16) 2002 c.21.

PART 3

Eligibility and assistance to be given

Duty to give assistance

17. The Scottish Ministers must give an individual whatever assistance the individual is entitled to be given under a determination of the individual's entitlement to a Scottish child payment.

Eligibility for a Scottish child payment

18. An individual is eligible for a Scottish child payment in respect of a child if—
- (a) the individual has made an application for the payment (or an application is treated as having been made by the individual by virtue of a provision in the schedule requiring the Scottish Ministers to make a determination without application in the individual's case),
 - (b) the child is under 6 years of age on the day the application is made,
 - (c) no other individual has received, or is due to receive, a Scottish child payment in respect of the child and the period that the payment will cover (other than in circumstances where paragraph 10(1)(b) of the schedule applies),
 - (d) the individual is ordinarily resident in Scotland on the day the application is made,
 - (e) the individual is responsible for the child on the day the application is made, and
 - (f) the individual has been awarded, for the day the application is made (or for a period or universal credit assessment period which includes that day), assistance of a kind specified in regulation 14.

Ongoing entitlement

19.—(1) A determination of an individual's entitlement to a Scottish child payment in respect of a child and a week may be made on the basis that the individual has an ongoing entitlement to a Scottish child payment.

(2) A determination of ongoing entitlement is made on the basis that the individual will continue to be entitled to a Scottish child payment in respect of that child in each subsequent week until—

- (a) the week following any week in which the individual ceases to have responsibility for the child,
- (b) the week following that in which the child attains the age of 6 years,
- (c) the week following any week in which the individual ceases to be ordinarily resident in Scotland,
- (d) any week in which no award of assistance of a kind specified in regulation 14 is made to the individual for any day in that week.

Value and form of a Scottish child payment

20.—(1) The value of a Scottish child payment in respect of a child is £10 per week.

(2) A Scottish child payment may only be given as money, except as provided for by paragraph (3).

(3) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), or under paragraph 29 of the schedule of these Regulations, the individual's Scottish child payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
 - (b) without the individual's agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.
- (4) For the purpose of sub-paragraph (3), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

Time of payment

21.—(1) Following a determination that an individual is entitled to a Scottish child payment, the payment is to be given in accordance with paragraph (2).

- (2) Payments are to be made in respect of periods of 4 weeks, in arrears, so that—
 - (a) the first payment is made in the last week of the period of 4 weeks beginning with the day on which the application is made (the individual's first payment period), 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.

Individual's right to stop receiving assistance

22.—(1) An individual may request that the Scottish Ministers cancel a determination of the individual's entitlement to assistance.

(2) On being requested to do so under paragraph (1), the Scottish Ministers must cancel a determination—

- (a) with immediate effect, or
- (b) with effect from a later date specified in the request.

(3) An individual is not entitled, and is not to become entitled, to be given assistance by a determination after it has been cancelled.

(4) A request under paragraph (1) must be made in such form as the Scottish Ministers require.

(5) The Scottish Ministers must publicise any requirements for the time being set under paragraph (4).

Later determination supersedes earlier

23.—(1) The latest determination of an individual's entitlement to a Scottish child payment in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual's entitlement to a Scottish child payment in respect of the same period or event.

(2) Accordingly the individual is not entitled, and is not to become entitled, to be given a Scottish child payment in respect of that period or event by the earlier determination insofar as it has been superseded.

PART 4

Transitory provision

Definitions – initial period

24.—(1) Regulations 25, 26, and 27 apply in respect of the initial application period and the initial payment period.

- (2) For the purposes of this Part—
- (a) the “initial application period” means the period beginning with the day on which these Regulations come into force and ending on the day which falls 14 weeks after that day, and
 - (b) the “initial payment period” means the period beginning with the day immediately after the end of the initial application period and ending on the day which falls 4 weeks after that day.

When an application is treated as made – initial period

25. Any application for a Scottish child payment which is received by the Scottish Ministers during the initial application period is to be treated for the purposes of these Regulations as having been made on the day immediately after the expiry of that period.

Time of payment – initial period

26. Where an individual’s first payment period (see regulation 21(2)(a)) would fall wholly or partly in the initial payment period, regulation 21(2) does not apply and instead—

- (a) the first payment to the individual is to be made in arrears on such date within the initial payment period as the Scottish Ministers consider appropriate,
- (b) subsequent payments to the individual are to be 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.

Duty to notify – initial period

27.—(1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom sub-paragraph (3) or (4) applies.

- (2) The Scottish Ministers place a duty under paragraph (1) by informing the person—
- (a) of the changes in circumstances which the person has a duty to notify them about,
 - (b) of the way in which the person is to notify them, and
 - (c) that failing to notify them about a change in any of those circumstances in that way, so that an individual’s entitlement to a Scottish child payment is determined on the basis of information that is false or misleading, may be an offence under section 72 of the 2018 Act.

(3) This sub-paragraph applies to an individual in respect of whom an application for a Scottish child payment is made during the initial application period.

(4) This sub-paragraph applies to a person acting on behalf of an individual to whom sub-paragraph (3) applies in relation to any application for a Scottish child payment during the initial period.

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