

Early Years Assistance

Scottish Government Response to the Consultation on Best Start Grant Regulations

September 2018

MINISTERIAL FOREWORD



I am delighted that one of my first acts as Cabinet Secretary for Social Security and Older People is to lay regulations in the Scottish Parliament for our new Best Start Grant. This marks significant and timely progress to delivering a new Scottish benefit.

I am also pleased to respond to the points raised during the most recent consultation to explain the changes that have been made to the policy as a result.

The consultation on draft regulations for the Best Start Grant (BSG), a form of Early Years Assistance provided for in the Social Security Act, ran from 23 March to 15 June 2018. It was the first in a series of consultations that will take your views on the new benefits that will be administered by Social Security Scotland.

The formal consultation built on active engagement with stakeholders and families over the last 2 years, to produce a benefit in keeping with the social security principles. In particular:

- Social security is an investment in the people of Scotland – the BSG increases provision by comparison with the Sure Start Maternity Grant (SSMG) and introduces 2 new payments, investing in the resilience of families at key points in their children’s early years at a time when they may be experiencing the impacts of welfare reforms.
- Social security is a human right – the BSG is designed to be accessible both in terms of eligibility and the systems that will support it.
- Respect for the dignity of individuals – the BSG is designed to reduce intrusive questioning where possible while maintaining a robust decision making system.
- The Scottish social security system is to contribute to reducing poverty in Scotland - eligibility is designed to reach families in poverty and at risk of falling in to poverty.
- The Scottish social security system is to be designed with the people of Scotland on the basis of evidence – extensive modelling, desk research and user testing has provided us with a good evidence base for our policy decisions.

The consultation has allowed us to make final policy decisions and feed these in to the development of IT systems and processes which are needed to make the BSG a reality.

The BSG will help support families who receive certain benefits, both in and out of work, who are feeling the impact of UK Government’s welfare reform. The provision for the first child will increase from £500 under the UK SSMG up to a total of £1,100, over 3 payments. Subsequent children, who receive nothing from the UK Government, will receive a total of £800 under the BSG.

Thank you for taking the time to submit your views.

Shirley-Anne Somerville MSP, Cabinet Secretary for Social Security and Older People

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INTRODUCTION

1. Once fully implemented, there will be three Best Start Grants:
 - A Pregnancy and Baby Grant – will help with expenses in pregnancy or of having a new child, for example a pram or additional heating. This lessens the financial burden on lower income families when they are expecting a child.
 - An Early Learning Grant – will help with costs during nursery and early learning years to support child development, for example travel costs, changes of clothes for messy play, trips out and toys for home learning.
 - A School Age Grant – helps with the costs of preparing for school, for example a school bag, educational toys, after school activities such as swimming or football, or helping with the cost of school milk or school trips.
2. In addition, we will integrate the administration of Best Start Foods (BSF), so that they are part of a single application process.
3. The BSG has been developed based on consultation and engagement with stakeholders, starting with a stakeholder event and detailed questions in the consultation A New Future for Social Security Consultation, during summer 2016 (the report on BSG can be found on page 199 of the Consultation Report¹). The BSG Reference Group was established in October 2016 to help gather evidence, bring a variety of informed perspectives and provide feedback on policy proposals. Membership and minutes of the meetings are available on the Scottish Government website².
4. Drawing on this work, illustrative regulations³ for the BSG were issued to the Social Security Committee and the Delegated Powers and Law Reform Committee of the Scottish Parliament on 28th September 2017, during the passage of the Social Security (Scotland) Act.
5. Throughout this period, we have received, and are continuing to take, views from social security Experience Panel members and other parents, for example groups of bereaved parents, kinship carers and lone parents, on the design of the form and service to deliver BSG⁴.
6. The Children’s Parliament was commissioned to work with children to seek their views during the consultation on the Best Start Grant Regulations⁵.

¹ Analysis of Written Responses to the Consultation on Social Security in Scotland <https://www.gov.scot/Resource/0051/00514351.pdf>

² Best Start Grant Reference Group <https://beta.gov.scot/groups/best-start-grant-reference-group/>.

³ Early Years Assistance: illustrative regulations <https://beta.gov.scot/publications/early-years-assistance-best-start-grant-illustrative-regulations-policy-narrative/>

⁴ Best Start Grant – Visual Summary of Research Findings <https://www.gov.scot/Publications/2018/08/1898>

⁵ Children’s Parliament ‘A better start in life’ Report <https://www.childrensparliament.org.uk/our-work/past-work/best-start-grant/>

7. Building on this consultation and engagement, Early Years Assistance, a Consultation on the Best Start Grant Regulations⁶ ran from 26 March to 15 June 2018 to gather further feedback on our proposals and develop final policy. There were 51 responses from a range of organisations and individuals and an analysis of consultation responses⁷ has been published.

IMPLEMENTATION OF THE BEST START GRANT

8. In keeping with good practice, the BSG will be implemented in stages, ensuring that we have a firm foundation before we move on to the next stage. The first payments of the Pregnancy and Baby Payment will be before Christmas 2018 and the Early Learning and School Age Payments will be introduced by Summer 2019.

9. The Scottish Fiscal Commission (SFC) is responsible for producing independent forecasts of devolved social security expenditure. For BSG Pregnancy and Baby payment, the SFC will publish forecasts alongside the laying of the BSG regulations.

10. Based on assumptions from the SFC model, in the first full year of running 2018-19, we estimate that there will be 12,500 BSG Pregnancy and Baby payments with a total cost of £5.5m. Once the Early Learning and School payments are added, we estimate that the total number of payments annually will be in the region of 39,000 at a cost of £12.1m, based on 2019-20 figures.

11. Alongside policy development, work has also been progressing on the design of Social Security Scotland. This will be headquartered in Dundee but will have a further site of similar size in Glasgow. The aim is to recruit a diverse workforce that represents our society and the people who will use our service.

12. The BSG service design team is now in the final stages of developing the business processes that will allow clients to access and receive the BSG. We have used an 'Agile' approach to service design, which means that we have continually tested evolving designs with prospective clients to make the application process as user-friendly as possible. Insights gained from this research include how we can make the language used in the application form easy to understand and how we can format the application form so that it meets the needs of people who have impairments. Once BSG payments are being made, we will continue to make improvements based on feedback from people who use the service.

13. Administration of BSG and BSF (currently Healthy Start Vouchers (HSV)) will be combined. This will mean that if, for example, a mother applies for BSF for one child and tells us on the application form about another child who meets the criterion for a BSG payment, we will be able to assess eligibility for both at the same time.

⁶ Early Years Assistance, a Consultation on the Best Start Grant Regulations
<https://www.gov.scot/Publications/2018/03/2016>

⁷ Early Years Assistance: Analysis of consultation responses on Best Start Grant responses
<https://www.gov.scot/isbn/9781787811942>

14. We are also looking at how we can make the application process as streamlined as possible when we already have information about an applicant in the system from a previous application, or can seek this electronically. The principle is that we should place the minimum evidence requirements on clients to reduce any barriers to application.

COMMUNICATION AND ADVICE

15. The need for clear guidance for both decision makers and applicants, and for effective promotion of the BSG at all stages to maximise uptake has been highlighted during consultation and at meetings with stakeholders. Widespread training and awareness raising of the BSG will also be required among partner agencies and advice and advocacy services to ensure that appropriate signposting is provided, and that applicants can access the necessary information and be suitably supported throughout the process. Ensuring that potential recipients clearly understand the application and appeals process is key.

16. Promotion of BSG will include marketing activity to launch the new benefit, which will be aligned with ongoing work with stakeholders to ensure that there is an awareness of the new entitlement. This communications and marketing activity will also be aligned with wider work within the Scottish Government to promote Scottish Government support available for low income families.

17. Social Security Scotland is actively engaging with the advice sector to understand the impacts of BSG and identify how we can work in partnership to support clients. We held an initial workshop on 21 August and will continue to develop the work moving forward. We will ensure advice services get the information they need to be able to advise clients effectively and we are training our client advisers to be able to give people comprehensive advice and support on our benefits.

SUMMARY OF CONSULTATION FINDINGS AND SG RESPONSE

This table sets out the Scottish Government's response to points raised in the consultation. Further information on some of the action taken is in the text below the table, listed by consultation question number.

Consultation Question	Response Numbers	Summary Analysis from Consultation Report	BSG Policy Response
Q1 - Residence	Yes - 32 No - 2 Don't know - 1 Not answered - 16	Respondents were largely supportive of the 'habitually resident' test, however, concerns were raised in relation to the potential for this to unfairly exclude vulnerable groups such as refugees, asylum seekers, and victims of domestic abuse, as well as EU migrants and those that have recently moved from other parts of the UK. Some questioned how habitual residence in Scotland would operate in practice.	<p>Despite broad support, on working through the practical implications, we have adapted our consultation proposals to make the process simpler and more accessible for applicants. Those on a qualifying benefit will have to demonstrate only ordinary residence in Scotland. This is a lower threshold than habitual residence and reflects the fact these applicants have already met stringent residency criteria in relation to their qualifying benefit.</p> <p>Applicants not on a qualifying benefit will require to demonstrate habitual residence in the EEA, as well as ordinary residence in Scotland. This is because we will usually know much less about their residence and identity than those on qualifying benefits. This approach allows periods of residence accumulated anywhere in the EEA to be used to demonstrate eligibility.</p> <p>The position for non-EEA migrants is explained in more detail below.</p>

<p>Q2 - There are two alternative responsibility tests set out in the consultation. Test 1 or Test 2?</p>	<p>Test 1 - 14 Test 2 - 21 Not answered - 16</p>	<p>There appears to have been some misinterpretation of the purpose of the proposed tests and related question by some respondents who considered this in terms of financial eligibility rather than to establish responsibility for a child. Test 2 was preferred by a larger proportion of respondents and was generally considered to be <i>simpler, more efficient, and allow for greater flexibility in determining responsibility</i>. However, concerns were raised over the reliance on Universal Credit (UC) (for example the timescales involved in securing decisions via Universal Credit could have implications for the BSG), and in relation to the implications and risks to the BSG uptake due to the UC and Tax Credit (CTC) two child rule. Concerns were also raised for kinship carers under the proposed arrangements at both tests.</p>	<p>Drawing on the responses to the consultation, we have combined the two tests we consulted on.</p> <p>The main test will be whether the applicant is in receipt of CTC, UC Child or Child Benefit for the child they are applying for. Certain order will also be taken as evidence.</p> <p>The test captures formal kinship carers and informal kinship carers who have secured a DWP benefit for the child they care for. It allows for electronic application without the requirement to present paper evidence. The use of CTC and UC Child have been welcomed as they are paid to the main carer of the child. CB is also included in response to concerns about the reliability of using CTC and UC.</p> <p>If responsibility for a child changes during one of the application windows e.g. a child moves from living with a parent to a kinship carer, a second payment can be made to the new carer.</p>
<p>Q3 - We have proposed that qualification by UC should be an award of more than £0 in the month before or the month in which the application is made.</p>	<p>Yes - 17 No - 12 Don't know - 7 Not answered - 15</p>	<p>The need for UC to pay over £0 in the month preceding or the month in which the BSG application is made was argued to be a barrier for those with fluctuating incomes, those on maternity leave, those in areas heavily dependent on seasonal work, and those on zero hours contracts. Weekly/4 weekly wages, Christmas and bank holidays were also seen as creating potential issues for this approach; and consideration was needed around how sanctions to qualifying benefits might impact BSG.</p>	<p>The policy has been updated in response to the consultation so that, where an award has been reduced to £0 because of a sanction or debt recovery, the applicant will still qualify. This protects the interests of the child in the family. While we recognise that fluctuating income will have an effect on UC award levels, including the month before the application is made in eligibility, the applicant will know whether their award is more than £0 at the time when they apply. In combination with long application windows, this gives applicants the option to choose when they apply so that they can qualify.</p>

<p>Q4 - We have proposed that in cases where the parent is under the age of 16, or is 18 or 19 and the grandparent (or another carer) is still in receipt of tax credit or UC because the parent is in training or non-advanced education, the grandparent or carer will be the eligible person.</p>	<p>Yes – 23 No – 8 Don't know – 3 Not answered – 17 (comments mostly indicate No)</p>	<p>The arrangements for payments to young parents were contentious. The majority of respondents agreed with the proposals, while others felt this negatively stereotyped young parents and impacted on their rights and access to the BSG. Also, difficult family relationships may prevent a young parent from receiving a payment if they are reliant on a parent to apply for them. There is also a risk that the money or associated goods might not ultimately be made available to the young parents/child. Several concerns were raised about taking control of the benefits away from the young parent, notably that the young person's self-efficacy and autonomy could potentially be undermined by possibly coercive or financially controlling grandparents (of the child) or otherwise difficult family dynamics.</p>	<p>In keeping with SSMG, the consultation proposed to make the grandparent the qualifying person for parents under 16 and those who are 18 and 19 and still in education and training. A number of concerns were raised about the grandparent qualifying, in particular around the rights of the child, empowering young parents and the possibility that the young parent might not benefit from the money.</p> <p>In response to discussions during the consultation period and in keeping with the social security principles of dignity and respect, there will be a choice for young parents:</p> <ul style="list-style-type: none"> • A young parent who is under 18 or 18 or 19 and still in full time education or training, can qualify for a payment. <p>Or/</p> <ul style="list-style-type: none"> • A grandparent or someone responsible for a young mother can qualify for a payment on the basis that they are responsible for someone having a baby.
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<p>Q5 - Do you think that the regulations (Annex A) are likely to meet the policy intent set out in this document?</p>	<p>Yes - 28 No - 1 Don't know - 6 Not answered - 16</p>	<p>It was generally felt that the BSG was likely to meet the policy aims set out, and would contribute to tackling child poverty. However, there were suggestions by some that the first child payment should be more widely available, e.g. including those with large age gaps between children, and that effective promotion of the second and third payments in particular would be crucial in ensuring uptake. One respondent had concerns about the potential exclusion of kinship carers which would contradict the Government's intended policy.</p>	<p>The general exclusion of children in care in the consultation draft of the regulations caused concern among stakeholders because it would have excluded some children in kinship care and children looked after at home. The consultation document was not clear that this was not the intention. The responsibility test outlined above will allow access for these groups. However, it is not the policy that foster parents and children who are in residential care should be able to meet the test of responsibility as the costs that the BSG is intended to meet are covered by the Local Authority in these cases.</p>
<p>Q6 - Can you identify any potential unintended consequences of the regulations?</p>	<p>Yes - 11 No - 19 Don't know - 5 Not answered - 16</p>	<p>Unintended consequences identified included concerns around the reliance on UC (e.g. not providing a true reflection of income) and again highlighted the potential confusion around the Tax Credit/UC two child rule and the implications for BSG uptake. Implications for those who choose not to use nurseries and/or to defer school intake were highlighted, along with a concern that the eligibility criteria and application process may be too complex for applicants to understand, and a risk that cash payments would not be used as intended.</p>	<p>While we recognise that UC has some limitations as a qualifying benefit, in order for BSG to be easy to access, requiring every applicant to provide evidence of their income to qualify for BSG would create a barrier to applying and make it expensive and time consuming to process. Using a qualifying benefit allows for a quick electronic check. We have extended UC eligibility over two months because of the short award period and because awards are made in arrears.</p> <p>We have also included CB as a benefit to evidence responsibility for a child in part because of the 2 child rule for UC and Tax Credits. While the regulations will capture 3rd and subsequent children who are listed on a UC or CTC claim rather than just those where an award has been made, this is likely to be difficult to communicate and CB is widely taken up and easy to understand.</p>

			The BSG is not conditional on taking up a place at school or nursery. We have changed the name of the second payment to the “early learning” payment to reduce confusion.
Q7 - Can you identify any gaps in the regulations?	Yes - 11 No - 22 Don't know - 3 Not answered - 15	In relation to potential gaps, again it was suggested that the qualifying benefits currently exclude several which could be useful, including the Council Tax Reduction (CTR), Maternity Allowance (MA) and Disability Living Allowance (DLA). Other gaps included the draft regulations not specifying how quickly applications will be processed or sufficient details regarding the re-determination process and timescales, and that students and care experience young people would potentially be excluded from the BSG where they did not hold a qualifying benefit.	We have sought to design the eligibility criteria for the BSG so that it reaches as many of the groups identified by stakeholders as possible. At the same time, in certain cases, we have decided not to change eligibility because it would reduce the focus of BSG on families who are on lower incomes and add a disproportionate amount of cost and complexity to processing. See Question 7 below for more information on policy decisions on CTR, MA, DLA as qualifying criteria and for students and care experienced young people. Timescales for making a determination will be included in guidance rather than in regulations. Further information on re-determination processes and timescales will also be in guidance.
Q8a - We have proposed that requests for a BSG re-determination should be made within 31 calendar days of receipt of notification of the original determination.	Yes - 27 No - 6 Don't know - 2 Not answered - 16	The timescales proposed for re-determination requests and processing were largely supported, although some would prefer a longer request period for applicants, and also a longer window for processing should there be a need for further evidence requests/gathering.	The period of 31 calendar days to request a re-determination is consistent with the timescale provided to applicant’s seeking to bring an appeal to the First-tier Tribunal. We believe the concerns raised by some respondents have been partly addressed as re-determinations can be requested up to 1 year after receipt of the original determination if there are ‘good reasons’ for lateness. The Agency will take a supportive role during this process and will assess every request individually, on a case by case basis.

			New evidence does not need to be submitted in order to request re-determination; this will be gathered (if required) when the Agency is undertaking the re-determination. Guidance will be provided to help people better understand the re-determination process, their rights and the support the Agency will make available.
Q8b - We have proposed that a BSG re-determination should be processed within 15 working days of receipt of a request.	Yes - 31 No - 5 Don't know - 1 Not answered - 14	Many felt that having re-determinations processed within 15 working days of receipt of a request was acceptable, although some would prefer a longer window for processing should there be a need for further evidence requests/gathering.	<p>Respondents were in favour of the Agency proposed timeline. The timescale will be clearly explained to applicants as will their appeal rights which are triggered when the Agency breaches the timescale.</p> <p>We believe the timescales balances the operational needs of the Agency whilst ensuring applicants do not have an unduly long wait for a response. The Agency will take a pro-active role in ensuring that it has the necessary evidence to make a new decision.</p>
9a - Are you aware of any equality impacts we have not identified?	Yes - 8 No - 22 Don't know - 4 Not answered - 17	Impacts on refugees and asylum seekers were identified.	We have considered whether the child of an asylum seeker could be eligible in their own right for BSG, rather than the parent qualifying for the payment. However, families with no recourse to public funds are regarded as a unit and that it is the unit which has no recourse to public funds. While there is no legal barrier to Social Security Scotland paying an asylum seeker or other person with no recourse to public funds; the difficulty is that person who receives those funds would be in breach of their immigration status, leading to potentially severe consequences. Scottish Ministers intend to make the case to the UK Government that since BSG seeks to support potentially vulnerable young

			families, an exception should be made that allows those with no recourse to public funds to access it. Should this work succeed, we will amend the regulations to make provision for this group. See Question 1 below.
9b - Are you aware of any evidence relevant to the BSG policy and Gender Reassignment and / or Sexual Orientation?	Yes - 0 No - 32 Don't know - 3 Not answered - 16	No comments were offered in response to this question.	N/A
Q10 - Are you aware of any impacts on children's rights and wellbeing which are not identified here?	Yes - 6 No - 27 Don't know - 2 Not answered - 16	Impacts on child's rights (in the case of young parents), and on subsequent children receiving lowered amounts were all considered to be potentially discriminatory.	A possible negative impact was identified in the consultation on second and subsequent children because the payment that has been introduced is not as high as that for first children. Over the three payments, provision for second and subsequent children significantly exceeds that under SSMG. Paying all children a £600 payment would not be affordable within the budget available and introducing different rules depending on family would be complex and possibly create inequalities between children in different families
Q11 - Can you identify any business related impacts not identified?	Yes - 2 No - 29 Don't know - 4 Not answered - 16	Impacts on businesses were largely in line with those identified in the Business and Regulatory Impact Assessment, with increases in enquiries to advice services and the need for training among a wide range of staff highlighted.	A Business Regulatory Impact Assessment has been published alongside the regulations.

Other Issues	Communication	<p>It was stressed that there is a need for clear guidance for both decision makers and applicants, and for effective promotion of the BSG at all stages to maximise uptake.</p> <p>Widespread training and awareness raising of the BSG will also be required among partner agencies and advice and advocacy services to ensure that appropriate signposting is provided, and that applicants can access the necessary information and be suitably supported throughout the process. Ensuring that potential recipients clearly understand the application and appeals process is key.</p>	<p>A plan to promote take up of the BSG is in development. This will include marketing activity to launch the new benefit, which will be aligned with ongoing work with stakeholders to ensure that there is an awareness of the new entitlement. This communications and marketing activity will also be aligned with wider work within Scottish Government to promote Scottish Government support available for low income families.</p>
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RESPONSE TO THE CONSULTATION – ADDITIONAL INFORMATION ON SELECTED QUESTIONS

This section gives additional information on the Scottish Government's response, listed by consultation question.

Question 1 - Residence

18. Though the consultation findings stated broad support for the residency model set out in the illustrative regulations, we have listened carefully to the concerns that were expressed and have decided to modify our approach to make the process simpler and more accessible.

19. Applicants on a qualifying benefit, or whose partner is on a qualifying benefit, will usually have demonstrated habitual residence in the Common Travel Area and will simply require to show that they are ordinarily resident in Scotland. Ordinary residence is defined as the place where a person chooses to live for a settled purpose, even if that purpose is for a relatively short period. It is therefore simpler to administer than habitual residence and will require claimants to provide a lower, more straightforward, standard of proof. This approach also allows Social Security Scotland to rely more heavily on the information it will already possess through access to DWP systems, again reducing the burden on applicants. In practice, this means that many applicants will be asked for little more than simple proof of address, as opposed to the more difficult and sometimes intrusive habitual residence test applied by DWP for low income benefits.

20. For applicants not in receipt of a qualifying benefit, the position is slightly different. These applicants may not be registered with DWP, meaning we will often possess no information about their identity or address history. In addition to being ordinarily resident in Scotland, such applicants will therefore also require to demonstrate habitual residence in the European Economic Area (EEA). In practice, the process of demonstrating ordinary residence in Scotland e.g. where it is clear that a person has lived here for a relatively significant period, will often be more than enough to also demonstrate habitual residence in the EEA (since Scotland is in the EEA). We have chosen to apply the condition of habitual residence to the EEA rather than e.g. the CTA or Scotland, as a way of simplifying the process and to broaden the evidence base that an applicant is able to draw on to establish eligibility. This is consistent with practice across the EEA where periods of residence in one member state can often be taken into account to establish eligibility for social security in another. We have also chosen not to replicate the elements of DWP's EEA right to reside test for low income benefits that serves to exclude from eligibility certain categories of EU nationals e.g. the economically inactive.

21. There is a close intersection between social security residence conditions and the immigration rules, reserved to the UK Government, that restrict access to public funds. Our policy intention is to be as generous as possible but without extending assistance to people whose ability to live and work in the UK could be jeopardised through receipt of public funds forbidden by their immigration status. However we do not believe that there is a strong argument for restricting access to BSG: the number of potential applicants in this group is small and they will often be amongst the most vulnerable. We have therefore chosen not to explicitly exclude those with no recourse to public funds and will discuss the effect of this with the UK Government. Our intention is to persuade them that it is right that BSG be extended to these groups, however this is ultimately a matter of reserved immigration policy and we will have little option but to abide by the UK Government's decision. We have also included rules which make express provision for the eligibility of certain categories of migrants (e.g. refugees) and those fleeing domestic abuse.

Question 2 – Responsibility Test

22. This was a very complicated area to conclude due to complex family situations and the policy aim of reaching kinship carers, whose situations vary.

23. The test will be used to establish responsibility for a child as part of eligibility in the following situations:

- All applicants for early learning and school age payments will need to show responsibility for the child/children listed on the application. For the pregnancy and new baby payment the check will be that the mother is, or has been, pregnant;
- Where someone is applying for the pregnancy and new baby payment but is not the mother, their partner or the person responsible for the parent who is applying e.g. where a child has been taken in to care and then placed with adoptive parents.

24. We will also use the test in deciding whether a child under 16 living in the same house is the responsibility of the applicant, as part of the decision on whether the payment is a £600 payment for the first child or a £300 payment for the second child. Part of the test is used to establish the relationship between a grandparent and a young parent where that is relevant.

25. The consultation sought views on two tests:

- **Test 1** - based mainly on receipt of Child Benefit (CB) and court orders controlling parental rights, which the DWP uses as a test for SSMG; and
- **Test 2** - a broader test which would also allow recipients of child tax credit (CTC) and the Child element of Universal Credit (UC) to qualify without evidencing parental rights.

26. Using receipt of an existing benefit as a test of responsibility means that the application can be wholly electronic, which is easier for the applicant and quicker to process. The majority of consultees preferred the second test on the basis that it reaches more parents, in particular informal kinship carers. It also means that parents and carers in non-standard families are not required to specify their relationship to the child, which some kinship carers we spoke to had found intrusive, especially if their situation had been difficult. Where concerns were raised about test 2, they were generally about the reliability of processing for CTC and UC child which can make them difficult to access. CB was seen as a more reliable option.

27. Drawing on the responses to the consultation, we have combined the two tests we consulted on to produce this proposed responsibility test, in three tiers:

- An award of CTC or the child element of UC or CB. This should cover the vast majority of cases;

Or/

- Presentation of evidence that you are a formal kinship carer, an adoptive parent or guardian of the child, or that you have taken responsibility for the child via the Human Fertilisation and Embryology Act (for children born to surrogates). The majority of these parents and carers would be able to qualify through the first tier of the test but listing the orders will make it clear that they are intended to be eligible. Some kinship carers cannot access CTC, UC child or CB due to receipt of a kinship care allowance but could qualify via this route;

Or/

- You are under 18 or 18 or 19 and in full time education and the child normally lives with you. This is likely to be an extremely small number of cases but we want to be able to take alternative evidence for young parents who may not have their own benefit claim.

28. The test captures informal kinship carers who have secured a DWP benefit for the child they care for and allows for electronic application without the requirement to present paper evidence. The use of CTC and UC Child have been welcomed as they are paid to the main carer of the child. CB can be paid to an absent parent and can sometimes be retained in cases of domestic and financial abuse.

29. At the time of writing the consultation, we had thought that it would be possible to give priority to the recipient of the CTC or UC child over the recipient of CB where this was a different parent. As the service design has developed, however, we have found that the Agency will not be able to access HMRC records in a way that allows for this.

Question 4 – How young Parents Qualify

30. The situations of young parents under 20 vary significantly and can change as a result of an unplanned pregnancy. We have considered access for three age groups who have differing challenges in terms of access and evidence needs:

- Parents under 16 are still children and will themselves be dependent on parents or carers. The under 18 rule means that no qualifying benefit is required for eligibility. The legal age of responsibility is 12 years old.
- Parents who are 16 or 17 may be dependent upon their parents, with their parent getting CB for both them and the grandchild. Alternatively, a parent who is 16 or 17 may be living independently and have their own benefit claim. The under 18 rule means that no qualifying benefit is required for eligibility. However, if the applicant is not listed in the DWP system by being in receipt of a benefit themselves, Social Security Scotland will need to ask for separate evidence to establish residence.
- Parents who are 18 or 19 and in full time education or training and still dependent on their parents or carers. An exception to CTC, UC Child and CB rules for those in education and training at this age means that grandparents can continue to receive benefits for these young parents.

31. Pregnancy can have a disruptive effect on family relationships at younger ages and these young parents may be in transition when they need to apply. The consultation proposed that making the grandparent the qualifying person for parents under 16 and those who are 18 and 19 and still in education and training, as happens for the SSMG. This would mean that the grandparent meets the eligibility criteria and receives the payment. A number of concerns were raised about the grandparent qualifying, in particular around the rights of the child, empowering young parents and the possibility that children might not have a say in how the money for their own child was spent. Examples were given of parents refusing to apply on the child's behalf or using the money for their own purposes. Despite this, the majority of respondents agreed with the grandparent proposal and felt it to be important for a pregnant child or new teen parent to have the support of an adult in accessing the payment.

32. We have also been considering how residence requirements interact with eligibility for this group. If we were to go down the route of making the grandparent the qualifying person, there is a risk that a young parent and their child would be prevented from benefitting from the BSG in circumstances where the grandparent has no recourse to public funds despite the young parent having the right to access funds e.g. as either an EEA or CTA national.

33. In response to discussions during the consultation period and in keeping with the social security principles of dignity and respect, we propose that there is a choice for young parents:

- A young parent who is under 18 or 18 or 19 and still in full time education or training, can be the qualifying person.

Or/

- The grandparent can be the responsible person and qualify for the payment on the basis that they are responsible for someone having a baby.

18 or 19 Year Olds in Full Time Education or Training

34. As part of this provision, the policy that all under 18s qualify for BSG regardless of whether they are on a qualifying benefit will be extended to 18 or 19 year olds who are still in full time education or training and dependent on their parents. In order for these young parents to be able to qualify independently of their parents i.e. apply without having to present evidence of their parent's claim for benefits, they will be asked for evidence that they are still in full time education or training and to confirm that they are still living at home and dependent on their parents or carers.

35. Providing support direct to the young parent fits with wider policy objectives of supporting students to stay in education. A pregnancy can make a student vulnerable to dropping out and potentially not returning to education and/or training at a later stage.

Parents Under 16

36. There were 40 births to mothers under 16 in 2016 in Scotland and we considered how to ensure that there would not be any barriers to these young parents receiving a payment. The legal age of capacity is 12 years old in Scotland and, in keeping with the rights based approach set out in the Social Security (Scotland) Act, we concluded that making the young person the eligible person was the best way to ensure they can exercise their right to social security. This will allow vulnerable under 16s who cannot rely on parents to act on their behalf, or who have had to leave home because of the pregnancy, to access a payment.

37. As a result of these changes to policy proposals, there will be different options for young parents and their families to access the BSG, depending on their circumstances. For example, if a young parent has been estranged from their family, they will be able to apply in their own right. However, where a young parent is still reliant on their own parents or carers, the grandparent will be able to access a BSG.

Question 7 – Gaps in the Regulations

38. Discussions with stakeholders and the consultation process have identified a number of groups who could be prioritised in BSG eligibility. We have sought to design the eligibility criteria for the BSG so that it reaches as many of these groups as possible. At the same time, in certain cases, we have decided not to change eligibility because it would reduce the focus of BSG on families who are on lower incomes and add a disproportionate amount of cost and complexity to processing. Details are set out below.

39. **Maternity Allowance (MA)** - MA is paid to people who cannot get statutory maternity pay. Recipients may be employed, self-employed or have recently stopped working. The number of people who receive MA and no qualifying benefit is expected to be low, almost all will qualify for BSG by another route. MA is not means tested and income of spouses and partners is not taken in to account so including MA is likely to extend BSG eligibility to people on higher incomes and undermine the principle that BSG is primarily an intervention for low income families. Adding a test to ensure that an MA recipient is on a low income or does not have a partner would increase administrative complexity and would be disproportionate to the numbers affected. We have therefore decided not to include MA as a qualifying criterion for BSG.

40. **Council Tax Reduction (CTR)** as a qualifying criterion - CTR is interlinked with UK benefits, in particular housing benefit and therefore has limited additional impact as a qualifying benefit, capturing a very small number of additional people. It is not a consistent proxy for low income. We have therefore decided not to include MA as a qualifying criterion for BSG.

41. **Disability Living Allowance (DLA) and Child DLA** – We concluded that costs associated with the disability were better looked at through child DLA and PIP.

42. **Care leavers under 26** - Our analysis shows that young care leavers on low incomes will qualify under rules set out in the draft regulations and that making specific provision for young care leavers might be counterproductive in complicating administration and communication. We therefore decided not to make separate provision for care leavers in the eligibility for BSG.

43. **Students** - Students who are under 18 will qualify for the Best Start Grant. Those who are 18 or 19, still dependent on their parents and in full time education or training will also qualify. Other students will need to be on a qualifying benefit which may mean that they have to wait and apply for a BSG after their baby is born, when they are in receipt of CTC or UC Child element. Separate provision for students has the potential to complicate BSG processing significantly in particular around residence requirements. We therefore decided not to make separate provision for students in the eligibility for BSG, with the exception of those who are 18 or 19 and still in full time education, as outlined above.

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