



T: 0300 244 4000
E: scottish.ministers@gov.scot

Dr Sally Witcher OBE
Scottish Commission on Social Security
c/o Secretariat
Victoria Quay
Edinburgh
EH6 6QQ

info@socialsecuritycommission.scot

30 April 2019

Dear Dr Witcher,

I am pleased to formally submit to the Scottish Commission on Social Security the draft Young Carer Grant regulations for your consideration as part of the 'super-affirmative' procedure outlined in section 97 of the Social Security (Scotland) Act.

I understand that you have already had some helpful informal discussions with my officials to set the context of what is reflected within the draft regulations, and I have asked them to agree an appropriate timescale for this work with you.

I have sent a copy of this letter to the Convener of the Social Security Committee in order to notify them that our proposals have been submitted to the Commission.

I look forward to receiving your report in due course.

Yours sincerely,

SHIRLEY-ANNE SOMERVILLE



DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.***

SOCIAL SECURITY

**The Carer's Assistance (Young Carer Grants) (Scotland)
Regulations 2019**

Made - - - -

**** 2019*

Coming into force in accordance with regulation 1

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28, 41(4)(a), 43(5) and 52 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument 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 consulted the Scottish Commission on Social Security.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 and come into force on the first Monday after the day on which they are made.

Interpretation

2. In these Regulations—

“applicant” means a person who has applied for a young carer grant,

“determination” means a determination of an individual’s entitlement under section 37 of the Social Security (Scotland) Act 2018,

“the qualifying period” means the period of 13 weeks described in regulation 5(1),

“young carer grant” means the grant provided for by these Regulations.

PART 2

Eligibility

Overview

3.—(1) A person who applies for a young carer grant (the “applicant”) is entitled to receive it if that person meets the conditions prescribed in these Regulations.

(2) Regulation 4 describes conditions about the making of applications, including those related to the age of the applicant.

(3) Regulation 5 describes conditions relating to the care being provided and regulation 6 describes conditions relating to the person or persons being cared for.

(4) Regulation 7 describes further conditions relating to receipt of assistance and the status of the applicant.

(5) Regulation 8 describes conditions relating to the applicant’s residence.

(6) Part 3 provides timescales for some procedural matters, including situations that involve multiple applications relating to care of the same person, and describes when the Scottish Ministers must determine that an individual is entitled to a young carer grant without an application.

(a) 2018 asp 9. 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). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(7) Regulation 12 describes the assistance that an applicant is entitled to receive.

Making of applications

4.—(1) A person is only entitled to a young carer grant if, on the day their application for that assistance is made, they are aged at least 16 and are under the age of 19.

(2) In a non-leap year, the birthday of a person born on 29th February is to be taken to be 28th February.

(3) An application is to be treated as made on the day it is received by the Scottish Ministers.

(4) In a case where, by virtue of a regulation 11, a determination is to be, or has been, made without an application, references in these Regulations to the day the application is made are to be read in accordance with paragraph (4) of that regulation.

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

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

required by the Scottish Ministers under section 38(1) of the Social Security (Scotland) Act 2018.

(6) For the purposes of determining assistance, the period of an application is the period of 13 weeks ending with the day before the day of the application for a grant and an application in respect of any other period of 13 weeks is to be regarded as an application for a different period, despite any overlap between the two periods.

Conditions relating to the care being provided

5.—(1) To qualify for a young carer grant the applicant must have provided care, in each of the 13 weeks ending with the day before the day on which their application for a grant is made (“the qualifying period”)—

- (a) to a person or persons described in regulation 6,
- (b) of the type described in paragraph (2),
- (c) which was not provided in the manner described in paragraph (3), and
- (d) for the number of hours described in paragraph (4).

(2) Care provided must—

- (a) assist with the day to day physical tasks and needs of the person being cared for (for example, eating and washing),
- (b) relate to the mental processes associated with those tasks and needs (for example, the mental process of remembering to eat and wash), or
- (c) otherwise involve activity that promotes the physical, mental or emotional well-being of the person being cared for.

(3) The care must not have been provided by the applicant—

- (a) under or by virtue of a contract, unless the contract is of a kind specified by regulations under section 1(3)(a) of the Carer’s (Scotland) Act 2016(a) as not to be regarded as a contract for the purposes of that Act, or
- (b) as voluntary work.

(4) The average number of hours of care provided over the qualifying period must have been at least 16 hours per week.

(a) asp 9.

Conditions relating to the person or persons being cared for

6.—(1) To qualify for a young carer grant the person or persons being cared for must, throughout the qualifying period and on the day the application for assistance is made, each be a person to whom a qualifying disability benefit is normally payable.

(2) An applicant may combine hours caring for up to three persons during the qualifying period.

(3) In paragraph (1), “qualifying disability benefit” means a disability benefit, or where applicable a component of a disability benefit, which is of a type, and being paid at a rate, that would entitle a person who cares for the recipient of that benefit and who meets the relevant qualifying conditions to—

- (a) carer’s assistance, payable under section 28 of the Social Security (Scotland) Act 2018,
- (b) carer’s allowance, or
- (c) invalid care allowance.

(4) In paragraph (3), “carer’s allowance” and “invalid care allowance” both mean an allowance payable under section 70 of the Social Security Contributions and Benefits Act 1992(a) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b).

Further eligibility conditions

7.—(1) An applicant is not entitled to a young carer grant if, on the day their application is made, the applicant is in receipt of a benefit listed in regulation 6(3) in respect of any of the persons being cared for.

(2) An applicant is not entitled to a young carer grant if they have applied for a benefit listed in regulation 6(3) in respect of a period that includes the day their application is made, unless it has already been determined that the applicant is ineligible for that benefit in respect of that day.

(3) An applicant is not entitled to a young carer grant if they have previously received a young carer grant, unless the day their application is made is at least one year after the day of the application in respect of which that grant was paid.

(4) If any other person has received a young carer grant in respect of care of any of the persons being cared for in an application for a young carer grant, the applicant is not entitled to a young carer grant unless—

- (a) the day the application is made is at least a year after the day of the application in respect of which that grant was paid, or the day of the latest such grant, or
- (b) the person who received that grant has died.

(5) If an applicant has already received three young carer grants, they are not entitled to a further young carer grant.

(6) An applicant is not entitled to a young carer grant if, on the day their application is made, they are subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(c), unless the applicant falls within a category or description of persons specified in Part 2 of the schedule of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (persons not excluded under section 115 of that Act from entitlement to various social security benefits)(d).

Conditions relating to residence

8.—(1) Subject to paragraphs (2) and (3), to qualify for a young carer grant the applicant must, on the day their application is made for that assistance, be—

(a) 1992 c.4. There are amendments to section 70 that are not relevant to these Regulations.

(b) 1992 c.7. There are amendments to section 70 that are not relevant to these Regulations.

(c) 1999 c.33. There are amendments to section 115 that are not relevant to these Regulations.

(d) S.I. 2000/636.

- (a) habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, the European Economic Area or Switzerland, and
- (b) ordinarily resident in Scotland.

(2) Paragraph (1)(a) does not apply to the following persons (if they meet the condition in paragraph (1)(b) of being ordinarily resident in Scotland)—

- (a) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28th July 1951, as extended by article 1(2) of the Protocol relating to the status of refugees done at New York on 31st January 1967,
- (b) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(a), where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the destitution domestic violence concession, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(b),
- (c) a person who has humanitarian protection granted under the rules made under section 3(2) of the Immigration Act 1971, or
- (d) a person who—
 - (i) is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(c), and
 - (ii) is in the United Kingdom as a result of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

(3) An applicant who is not ordinarily resident in the United Kingdom does not need to meet the conditions in paragraph (1) (and therefore is entitled to a young carer grant) if they—

- (a) have previously been properly paid a young carer grant,
- (b) have since the day of their application for the young carer grant that was properly paid, or the later of two such grants, left the United Kingdom to become ordinarily resident in the European Economic Area or Switzerland, and
- (c) meet the other conditions prescribed in these Regulations.

PART 3

Procedural matters

Periods for redetermination requests

9.—(1) The period for requesting a re-determination of entitlement to a young carer grant, under section 41 of the Social Security (Scotland) Act 2018, is 31 days beginning with the day that the applicant is informed, in accordance with section 40 of that Act, of the right to make the request.

(2) Where such a request is validly made, the period allowed for re-determination (within the meaning of section 43 of that Act) is 16 working days beginning with—

- (a) the day the request is received by the Scottish Ministers, or
- (b) where the request is received by the Scottish Ministers later than the period prescribed by paragraph (1), the day on which the Scottish Ministers, or on appeal the First-tier Tribunal for Scotland, decide that the applicant has a good reason for not requesting the re-determination sooner.

(3) For the purpose of paragraph (2), a “working day” is a day other than—

(a) 1971 c.77.
 (b) S.I. 2005/1379.
 (c) 1999 c.33.

- (a) a Saturday,
- (b) a Sunday, or
- (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(a).

Multiple applications involving care of the same person

10.—(1) Paragraphs (2) and (3) apply where two or more applicants state that they are caring for the same person.

(2) The Scottish Ministers must determine which (if any) of the applicants is to be entitled to receive a young carer grant.

(3) Where the applications were made at different times, the Scottish Ministers must determine the application made first before they determine any other application.

Determination following backdated award of assistance

11.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to a young carer grant without receiving an application where—

- (a) an application has previously been made for a young carer grant (“the application”),
- (b) the determination made in respect of the application was that the applicant was not entitled to a young carer grant,
- (c) the only reason for the applicant not being entitled to a young carer grant was that a person being cared for was not during the qualifying period for the application in receipt of a qualifying disability benefit as required by regulation 6,
- (d) the Scottish Ministers establish that—
 - (i) following an appeal, an award of a qualifying disability benefit has made to the person being cared for that is a backdated award,
 - (ii) had that award been made before the day of the application, a determination that the individual is entitled to a young carer grant would have been made instead, and
- (e) no other person has received a young carer grant since the day of the application, in respect of care of the person being cared for.

(2) In making a determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

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

(4) In this regulation a “backdated award” means an award of assistance for a day, or a period that begins on a day, that falls before the day the decision to make that award was taken.

PART 4

Assistance to be given

Amount and form of young carer grants

12.—(1) A young carer grant is to be given as a payment of £300.

(2) A young carer grant is to be given as money (subject to paragraph (3)).

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

(3) If—

- (a) the Scottish Ministers offer to give an applicant some or all of the value of a young carer grant in a form other than money, and
- (b) the applicant agrees to be given the grant in that form,

the grant is to be given in that form, unless the applicant withdraws agreement before the grant is given.

[***]

St Andrew's House,
Edinburgh
*** 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under section 28 of the Social Security (Scotland) Act 2018 for payments to be made to help young persons who care for disabled persons.

Part 1 is formal and contains commencement and interpretation provisions.

Regulations 3 and 4 provide that applications are required and describe the age limits which determine when applications can be made.

Regulations 5 to 7 set out entitlement rules. These are based on the amount and nature of care, the persons to whom care can be provided and rules relating to receipt of social security assistance and immigration status. Regulation 8 describes residence requirements.

Regulation 9 prescribes periods for making requests for redetermination of decisions on applications and for responding to those requests.

Regulation 10 describes what is to happen where applications are made by more than one person.

Regulation 11 prescribes a situation in which the Scottish Ministers are required to determine, without receiving an application, that a person is entitled to a young carer grant. This is to be done where a person being cared for receives a backdated award of a social security benefit, that would have altered a previous determination had the award been made before that determination was made, where certain conditions are met.

Part 4 sets out the amount of a young carer grant that is to be given to persons who qualify for the grant.

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.