

The Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022 – Policy Note

Amendments of the Best Start Grant Regulations

Regulation 2(2) of the Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022 (“the amending regulations”) amends the rules on child responsibility to reflect changes to the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”). The amendment allows an individual to be “responsible” for a child under the Best Start Grant regulations if they have a parental order under section 54A of the 2008 Act (this covers surrogacy arrangements). The current Best Start Grant Regulations only provide for a section 54 order - this can only be granted to two applicants who are a couple. Section 54A was added to the 2008 Act and this allows an equivalent parental order to be granted to a single applicant. Our amendment will ensure all individuals who are responsible for a child through parental orders under the 2008 Act can be classed as having responsibility for the child for Best Start Grant.

It also expands the definition of a kinship carer to include the definition set out in the Looked After Children Regulations 2009 which includes kinship carers who have a direct relationship with the child. This change supports the roll out of Scottish Child Payment to under 16s to allow kinship carers who are not related to the child but are known to them and have a pre-existing relationship with the child to be eligible.

We are also exploring whether we need to expand the list of agreements which can be used to evidence a kinship care. If included this change would apply to Best Start Grant, Best Start Foods and Scottish Child Payment. We will notify SCOSS if a further provision is drafted in relation to this.

Regulation 2(3) will allow Social Security Scotland to make a determination without application to automatically award Best Start Grant Early Learning Payment and School Age Payment to eligible individuals who are in receipt of Scottish Child Payment (assuming the Scottish Child Payment award is not suspended and the information available to the Agency indicates the individual is likely to be eligible for the relevant Best Start Grant payment).

Social Security Scotland will write to all existing clients in receipt of Scottish Child Payment when these regulations come into force notifying them that they will be assessed for auto award of Best Start Grant Early Learning Payment and School Age Payment when their child enters the relevant window. New recipients of Scottish Child Payment will also be notified that they will be considered for auto award of the relevant Best Start Grant payments when they receive their Scottish Child Payment award letter. The letters to existing and new clients will sign post them to Social Security Scotland if they do not want to be considered for auto award.

Regulations 2(4), 2(6) and 2(7) remove the condition that the child is not looked after by the local authority in residential care for all 3 Best Start Grant Payments. This aligns with the approach taken for Scottish Child Payment and will mean individuals will still be eligible to apply for Best Start Grant where their child is in

residential care as long as they are still responsible for the child, in terms of the Best Start Grant Regulations, and in receipt of a qualifying benefit.

Regulation 2(5) provides new exceptions to the general rule that an individual is only entitled to the higher Pregnancy and Baby Payment (currently £606) when they are applying in respect of their first child. Under the changes, an individual may be entitled to the higher Pregnancy and Baby Payment in respect of a child, despite already being responsible for another child, where that individual is one of the following:

- a) an individual granted refugee status, humanitarian protection, or leave under the Afghanistan resettlement schemes or the Ukraine settlement schemes, and they have a child from before they arrived in the UK
- b) an individual who first became responsible for a child who is not their own when that child was more than 12 months old
- c) an individual who has been forced to leave their home with a child due to domestic abuse

This amendment was prompted by a UK Upper Tribunal decision in relation to Sure Start Maternity Grant: [SK and LL v Secretary of State for Work and Pensions](#). The Upper Tribunal held (a) refugees and individuals granted humanitarian protection with pre-flight children, and (b) individuals who have their first child when they are already responsible for a child who came into their care after 12 months old, should have access to a Sure Start Maternity Grant.

Amendment of the Best Start Foods Regulations

Regulation 3(2) expands the definition of a kinship carer to include the definition set out in the Looked After Children Regulations 2009 which includes kinship carers who have a direct relationship with the child. This amendment mirrors the changes set out in Regulation 2(2) to ensure the definition of kinship care is consistent with that definition.

Regulation 3(3) amends the rules on child responsibility to reflect changes to the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”). This amendment mirrors the changes set out in Regulation 2(2) and allows an individual to be “responsible” for a child under the Best Start Foods regulations if they have a parental order under section 54A of the 2008 Act (this covers surrogacy arrangements). The current Best Start Foods Regulations only provide for a section 54 order - this can only be granted to two applicants who are a couple. Section 54A was added to the 2008 Act and this allows an equivalent parental order to be granted to a single applicant. Our amendment will ensure all individuals who are responsible for a child through parental orders under the 2008 Act can be classed as having responsibility for the child for Best Start Foods.

The laying powers for Best Start Foods in the Social Security Act 1988 allow the amendments for Best Start Foods to be made in a negative SSI. We are laying the amendments in one SSI because the amendments being made to the Best Start Foods regulations are identical to the ones being made to the Best Start Grant regulations.

Amendment of the Scottish Child Payment regulations

Regulation 4(3) of the amending regulations substitutes a new “interpretation” regulation in the Scottish Child Payment Regulations 2020 (“the SCP Regulations”) in order to define certain terms.

Regulation 4(3) inserts a new definition of a “kinship carer” to expand the meaning of being responsible for a child and ensures alignment with the revised definition in Best Start Grant and Best Start Foods .

Regulation 4(5) inserts new Regulation 18A which makes clear that an individual’s entitlement begins on the date on which the application is made or is treated as made in accordance with regulation 5.

Regulation 4(6) amends regulation 20 of the SCP Regulations to allow Social Security Scotland to make a lump-sum payment equivalent to up to 12 weeks of Scottish Child Payment in the unfortunate event where a child to whom a claim relates, dies. This amount is consistent with the approach taken by the UK Government in relation to Universal Credit provisions, which allow Universal Credit to be paid for a run-on period of up to 12 weeks following the death of a child.

Regulation 4(7) amends Regulation 21 to remove the existing 4 week deadline for making Scottish Child Payments after receiving an application and instead follow the approach taken for other Scottish social security benefits which allow for payments to be made 4 weeks in arrears, with the decision letter informing the date of the first payment. The individual then moves onto 4 weekly payment cycles.

The current 4 week deadline for making Scottish Child Payments after receiving application creates problems in practice for Social Security Scotland, as often this deadline cannot be met due to the high volume of claims Social Security Scotland manage, which will increase substantially when the payment rolls out to older children. This is made even more difficult where additional evidence is required before a decision on payment can be made.

Regulation 4(8) amends paragraph 11(3) of the schedule – This allows a determination without application to add a child aged 6 and over to an individual’s claim, and backdate entitlement to no more than 4 weeks before the day on which the individual was recognised to be responsible for the child and no earlier than the commencement date of these regulations. This approach to adding older children is consistent with the existing approach in the current regulations.

Regulation 4(9) amends paragraph 12 of the schedule makes provision for a determination without application when an individual’s entitlement to Scottish Child Payment stops due to a change in circumstances, and the individual subsequently becomes entitled again. The change of circumstances must relate to one of the following matters: the individual is no longer in receipt of one of the qualifying reserved benefits (see regulation 14) or they no longer have responsibility for the child (see regulation 12). Under the 2020 regulations an individual’s claim could automatically restart if they became eligible again within 12 weeks of the date of determination to stop the claim. This paragraph is amended so that the relevant 12 week period during which a claim can be automatically restarted begins from the day

the change of circumstances took effect. After that period the individual must reapply.

This change will have no effect on the majority of cases where this happens in practice – those individuals who receive Universal Credit where, due to fluctuating incomes, their UC award can drop off for an assessment period – allowing them to be automatically re-enrolled if their UC award restarts within a 12 week period. However it will mean that where there is a longer delay between a change of circumstances taking effect and being notified to Social Security Scotland, an individual will need to reapply for Scottish Child Payment if they become eligible again after 12 weeks of the change of circumstances. This is consistent with the original policy intent and ensures that individuals are not automatically awarded Scottish Child Payment after long periods of ineligibility, allowing for proper checks to be done to ensure eligibility and check for any other changes of circumstances.

Regulations 4(10) and 4 (11) amend paragraphs 34 and 35 of the schedule which relate to re-determination and appeal deadlines and deadlines for making an application for Scottish Child Payment. These allow for discretionary consideration to allow an extension of the deadlines to submit a re-determination or appeal where COVID-19 is a factor in the delay. These amendments remove the cross-reference to the Coronavirus (Scotland) Act 2020, which may expire at the end of September 2022. We have defined coronavirus in new regulation 4 of the SCP Regulations (regulation 4(2) of the amending regulations).