

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

SOCIAL SECURITY

**The Scottish Child Payment Regulations 2020
and the Disability Assistance for Children and
Young People (Scotland) Regulations 2021
(Miscellaneous Amendments) Regulations 2022**

Made - - - - 2022
Coming into force - - 9th February 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 31, 36, 51, 52, 79 and 95 of the Social Security (Scotland) Act 2018(1) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, 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 and commencement

1. These Regulations may be cited as the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 and come into force on 9 February 2022.

Amendment of the Scottish Child Payment Regulations 2020

2.—(1) The Scottish Child Payment Regulations 2020(2) are amended in accordance with paragraphs (2) to (4).

(1) 2018 asp 9 (“the 2018 Act”). Section 51 of the 2018 Act was amended by section 12 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). 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 these Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) S.S.I. 2020/351, amended by S.S.I. 2021/16.

(2) After regulation 19 (ongoing entitlement) insert—

“Circumstances in which assistance may be suspended

19A.—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Scottish child payment in respect of a period by virtue of regulation 19 is not to become entitled to be given some or all of that assistance at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 21 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Scottish child payment).

(2) Where such a decision is made in respect of an individual, payments of Scottish child payment to that individual are to be suspended until such time as the Scottish Ministers decide that the individual is once again to become entitled to be given Scottish child payment.

(3) The Scottish Ministers may decide to suspend an individual’s Scottish child payment only in the circumstances where—

- (a) paragraph 25(2) of the schedule applies, or
- (b) the Scottish Ministers have made arrangements (whether under section 85A of the 2018 Act, section 85B of the 2018 Act or otherwise) for a person to receive the Scottish child payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Scottish child payment—
 - (i) in order to protect the individual from the risk of financial abuse, or
 - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Scottish child payment.

Having regard to financial circumstances

19B. The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend payment to the individual of some or all of a Scottish child payment.

Information to be given following suspension

19C.—(1) Having made a decision to suspend an individual’s Scottish child payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Scottish child payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 19D to require the Scottish Ministers to review their decision.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Right to review suspension

19D.—(1) An individual may require the Scottish Ministers to review a decision to suspend that individual’s Scottish child payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day on which they received notice from the individual requiring them to review their decision,
 - (b) inform the individual of the outcome of the review including the reasons for it.
- (3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Ending a suspension

- 19E.** The Scottish Ministers are to make a decision to end a suspension where—
- (a) the individual provides the information mentioned in paragraph 25(1) of the schedule and the Scottish Ministers consider that they do not require to make a determination without application,
 - (b) regulation 19A(3)(a) applies and the Scottish Ministers make a determination without application under paragraph 6 (determination following official error resulting in underpayment), 7 (determination following error resulting in overpayment), 8 (determination following backdated award of assistance), 10 (determination following change of circumstances, etc.), 11 (determination following award of a Scottish child payment in respect of another child), 12 (determination following cessation of award of a Scottish child payment) or 13 (determination to effect a deduction decision) of the schedule,
 - (c) the Scottish Ministers make a determination under paragraph 25(4) of the schedule,
 - (d) the circumstances mentioned in regulation 19A(3)(b) no longer apply, or
 - (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

Effect of suspension ending

- 19F.** When—
- (a) the suspension of an individual’s Scottish child payment ends, and
 - (b) under the latest determination of the individual’s entitlement to Scottish child payment relating to the period of the suspension the individual would have become entitled to be given Scottish child payment during that period,

the individual is immediately to be given the Scottish child payment that the individual would have become entitled to be given under the determination during the period of suspension.

Interpretation: regulations 19A to 19F

- 19G.** In regulations 19A to 19F—
- (a) references to an individual’s Scottish child payment being suspended are to an individual not becoming entitled to be given some or all of the Scottish child payment in respect of a period that the individual otherwise would at the time, or times, prescribed by regulation 19 (ongoing entitlement), and
 - (b) “financial abuse” includes—
 - (i) having money or other property stolen,
 - (ii) being defrauded,
 - (iii) being put under pressure in relation to money or other property,

- (iv) having money or other property misused.”.
- (3) In paragraph 16(2) of the schedule (duty to re-determine and period allowed)—
- (a) at the end of sub-paragraph (a) omit “or”,
 - (b) at the end of sub-paragraph (b) insert—
 - “, or
 - (c) in a case where the Scottish Ministers have informed the individual of their decision that the request for a re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-Tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.”.
- (4) For paragraph 25 of the schedule (obtaining information to make determination) substitute—

“Obtaining information to make determination

25.—(1) Where—

- (a) the Scottish Ministers are either—
 - (i) determining an individual’s entitlement to a Scottish child payment, or
 - (ii) considering whether paragraph 6, 7, 8, 10, 11, 12 or 13 requires them to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application), and
- (b) they require further information in order to satisfy themselves about any matter material to the making of the determination of entitlement or (as the case may be) to their consideration of whether they are required to make a determination without receiving an application,

they may request that the individual provide them with the information within such period as they specify.

(2) If—

- (a) the Scottish Ministers are either—
 - (i) determining the individual’s entitlement to a Scottish child payment, or
 - (ii) considering whether paragraph 6, 7, 8, 10, 11, 12 or 13 requires them to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application),
- (b) the individual fails to provide the requested information within the period specified under sub-paragraph (1), and
- (c) it is the first time that the individual has failed to provide the Scottish Ministers with the requested information within a specified period since they began making the determination or considering the matter mentioned in head (a)(ii),

the Scottish Ministers may issue a decision to suspend the Scottish child payment to the individual in accordance with regulations 19A to 19G (suspension of entitlement).

(3) Where the Scottish Ministers issue such a decision, they must, at the same time, request that the individual provide them with the information within such further period as they specify.

(4) If the individual fails to provide information requested under sub-paragraph (1) within the period specified under sub-paragraph (1) or (3) the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the individual does not satisfy the eligibility rules in regulation 18, or (as the case may be) that the individual has no ongoing entitlement under regulation 19.”.

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

3.—(1) The Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽³⁾ are amended in accordance with paragraphs (2) to (11).

(2) In regulation 2 (interpretation - general) after the definition of “residential educational establishment” insert—

““short-term assistance” means short-term assistance given in accordance with Part 1 of the schedule.”.

(3) In regulation 5⁽⁴⁾ (residence and presence conditions)—

(a) for paragraph (1)(c) substitute—

“(c) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999⁽⁵⁾,”

(b) after paragraph (5) insert—

“(5A) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where they are a person who—

(a) is lawfully working in the United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union⁽⁶⁾ which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,

(b) is a member of the family of, and living with, a person specified in sub-paragraph (a), or

(c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.”.

(c) for paragraph (10) substitute—

“(10) The past presence condition in paragraph (1)(e) does not apply where an individual—

(a) has a terminal illness within the meaning of regulation 15, or

(b) is an individual described in paragraph (7).”.

(d) in paragraph (10A)—

(i) at the end of sub-paragraph (b) omit “or”,

(ii) after sub-paragraph (c) insert—

“(d) has been granted refugee status or humanitarian protection under the immigration rules, or

(e) has leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules”.

⁽³⁾ S.S.I. 2021/174, amended by S.S.I. 2021/320 and S.S.I. 2021/416.

⁽⁴⁾ Paragraph (10A) was inserted and paragraph 11 was amended by S.S.I. 2021/320.

⁽⁵⁾ 1999 c. 33.

⁽⁶⁾ OJ C 202, 7.6.2016, p.146.

- (e) in paragraph (11) for “paragraphs (10) and (10A)” substitute “paragraph (10A)”.
- (4) In regulation 6 (interpretation – residence and presence conditions), in the definition of “child in care” for “5(7)(a)”, in both places where it appears, substitute “5(7)(b)”.
- (5) In regulation 17(5)(b) (effect of admission to a care home on ongoing entitlement to care component) after “met” insert “wholly or partly”.
- (6) In regulation 20(4)(b) (entitlement to care component beginning while in alternative accommodation) after “met” insert “wholly or partly”.
- (7) In regulation 23(4)(b) (amount and form of Child Disability Payment) for “section 61 of the Social Security Act 1975” substitute “section 104 of the Social Security Contributions and Benefits Act 1992(7)”.
- (8) In regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) omit paragraph (2)(a)(iii).
- (9) After regulation 26 (continuing eligibility) insert—

“Circumstances in which assistance may be suspended

26A.—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Child Disability Payment in respect of a period by virtue of regulation 26 is not to become entitled to be given some or all of either component or both components of that assistance at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 25 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Child Disability Payment).

(2) Where such a decision is made in respect of an individual, payments of Child Disability Payment to that individual are to be suspended until such time as the Scottish Ministers decide that the individual is once again to become entitled to be given Child Disability Payment.

(3) The Scottish Ministers may decide to suspend an individual’s Child Disability Payment only in the circumstances where—

- (a) section 54(1A) of the 2018 Act applies,
 - (b) the Scottish Ministers have made arrangements (whether under section 85A of the 2018 Act, section 85B of the 2018 Act or otherwise) for a person to receive the Child Disability Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Child Disability Payment—
 - (i) in order to protect the individual from the risk of financial abuse, or
 - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Child Disability Payment, or
 - (c) the individual has reached the age of 16 years and there is no arrangement to make that payment to—
 - (i) the individual, or
 - (ii) another person to be used for the benefit of the individual.
- (4) In this regulation “financial abuse” includes—
- (a) having money or other property stolen,
 - (b) being defrauded,
 - (c) being put under pressure in relation to money or other property,
 - (d) having money or other property misused.

Having regard to financial circumstances

26B. The Scottish Ministers must have regard to an individual's financial circumstances prior to making a decision to suspend payment to the individual of some or all of either component or both components of Child Disability Payment.

Information to be given following suspension

26C.—(1) Having made a decision to suspend an individual's Child Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual's Child Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual's right under regulation 26D to require the Scottish Ministers to review their decision.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Right to review suspension

26D.—(1) An individual may require the Scottish Ministers to review a decision to suspend that individual's Child Disability Payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day on which they received notice from the individual requiring them to review their decision,
- (b) inform the individual of the outcome of the review including the reasons for it.

(3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Ending a suspension

26E. The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information requested under section 54(1) of the 2018 Act and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 26A(3)(a) applies and the Scottish Ministers make a determination without application under regulation 30 (consideration of entitlement after specified period), 31 (determination following change of circumstances, etc.), 32 (determination following official error – underpayments), 33 (determination following error – overpayments) or 34 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act,
- (d) the circumstances mentioned in regulation 26A(3)(b) or (c) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

Effect of suspension ending

26F. When—

- (a) the suspension of an individual’s Child Disability Payment ends, and
- (b) under the latest determination of the individual’s entitlement to Child Disability Payment relating to the period of the suspension the individual would have become entitled to be given Child Disability Payment during that period,

the individual is immediately to be given the Child Disability Payment that the individual would have become entitled to be given under the determination during the period of suspension.”.

(10) In regulation 32(2) (determination following official error – underpayments) at the end of sub-paragraph (a) for “or” substitute “and”.

(11) In paragraph 1 of the schedule (entitlement to short-term assistance)—

- (a) in sub-paragraph (1B)—
 - (i) after “where” insert “a determination of”,
 - (ii) after “sub-paragraph (1A)(a)” insert “and the individual had previously been awarded short-term assistance on the basis that their entitlement to Child Disability Payment was under review by the First-tier Tribunal prior to it making the decision that has been set aside,”,

(b) after sub-paragraph (1B) insert—

“(1C) Where the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of the subsequent determination of the individual’s entitlement to Child Disability Payment mentioned in sub-paragraph (1) (a), and the Scottish Ministers had previously determined, pursuant to an application made by the individual, that the individual was not entitled to short-term assistance on the basis that the subsequent determination was not under review, the Scottish Ministers are to make a determination without application of the individual’s entitlement to short-term assistance.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Scottish Child Payment Regulations 2020 (the 2020 Regulations) and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (the 2021 Regulations).

The 2020 Regulations provides for Scottish child payment to be made on the basis of ongoing entitlement. Regulation 2(2) inserts new paragraphs 19A to 19G in the schedule to make provision to suspend entitlement to Scottish child payment in specified circumstances and regulation 2(4) substitutes a new paragraph 25 (obtaining information to make determination).

Regulation 2(3) amends paragraph 16 of the schedule of the 2020 Regulations to clarify when the period for re-determination begins in a case where the First-tier Tribunal has decided that a request for re-determination has been validly made.

Regulation 3(2) inserts a definition of short-term assistance in regulation 2 of the 2021 Regulations. Regulation 3(3) amends regulation 5 of the 2021 Regulations to allow access to Child Disability Payment for certain individuals who would be excepted from restrictions on their access to disability benefits covered by section 115 of the Immigration and Asylum Act 1999 and to disapply the habitual residence condition from refugees and their dependants. Regulation 3(4) to (7) make minor amendments to the 2021 Regulations. Regulation 3(8) amends regulation 24 of the 2021 Regulations to remove reference to regulation 10 of the 2021 Regulations with the effect that an individual who is entitled to any of the benefits mentioned in that regulation cannot make an application for Child Disability Payment.

The 2021 Regulations provide for Child Disability Payment to be made on the basis of ongoing entitlement. Regulation 3(9) inserts new regulations 26A to 26F to make provision to suspend entitlement to Child Disability Payment in specified circumstances.

Regulation 3(10) makes a minor amendment to regulation 32 of the 2021 Regulations. Regulation 3(11) amends paragraph 1 of the schedule of the 2021 Regulations. Sub-paragraph (1B) is amended to provide that a determination without application is to be made by the Scottish Ministers only where the individual had previously been awarded short-term assistance. Sub-paragraph (1C) is inserted to place a duty on the Scottish Ministers to make a determination without application of an individual's short-term assistance where the First-tier Tribunal for Scotland set aside their own decision pursuant to a decision by the Scottish Ministers not to accept a request for a re-determination of the individual's entitlement to Child Disability Assistance.

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Social Security Directorate and online at www.legislation.gov.uk.