SCOTTISH STATUTORY INSTRUMENTS

2020 No. 351

The Scottish Child Payment Regulations 2020

PART 2

Interpretation

General

[F1Interpretation

4. In these Regulations—

"the 2018 Act" means the Social Security (Scotland) Act 2018 **M1**,

"child" means a person under the age of 16, and

"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS CoV-2).]

Textual Amendments

F1   Reg. 4 substituted (14.11.2022) by The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (S.S.I. 2022/336), regs. 1(1), **4(2)** (with reg. 5)

Marginal Citations

M1   2018 asp 9.

Expressions about time and timing

When an application is to be treated as made

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

Commencement Information

I1   Reg. 5 in force at 9.11.2020, see **reg. 2**

Meaning of "working day"

6. A "working day" means a day other than—

(a)   a Saturday,

(b)   a Sunday, or

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(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 **M2**.

Commencement Information

I2   Reg. 6 in force at 9.11.2020, see **reg. 2**

Marginal Citations

M2   1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays, it is amended by the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2), **section 1**.

Calculation of the age of a child born on 29 February

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

Commencement Information

I3   Reg. 7 in force at 9.11.2020, see **reg. 2**

Meaning of "week"

8. A "week" means a period of 7 days.

Commencement Information

I4   Reg. 8 in force at 9.11.2020, see **reg. 2**

Expressions about inter-personal relationships

Meaning of being responsible for a child

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

(a) the child is a dependant of the individual on that day,

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

Commencement Information

I5   Reg. 9 in force at 9.11.2020, see **reg. 2**

Meaning of "partner"

10. A person ("A") is the partner of another person ("B") on a day only if, on that day, A and B would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012 **M3** (see section 39 of that Act **M4**).

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Meaning of "kinship carer"

[**F2**11.—(1) An individual is a kinship carer for a child on a day if—

(a) the individual is—

(i) a person who is related to the child,

(ii) a person who is known to the child and with whom the child has a pre-existing relationship, or

(iii) a friend or acquaintance of a person related to the child, and

(b) on that day, the child lives with the individual (exclusively or predominantly) under the terms of—

(i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014,

(ii) any other order under section 11(1) of the Children (Scotland) Act 1995 ("the 1995 Act")**M5**, or

(iii) an agreement between the individual, the individual's partner or both of them and—

(aa) a local authority by which the child is looked after within the meaning of section 17(6) of the 1995 Act,

(bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989 ("the 1989 Act")**M6**, or

(cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25 of the Children (Northern Ireland) Order 1995 ("the 1995 Order")**M7**.

(2) A person described in paragraph (1)(a) must not be—

(a) the parent of the child within the meaning of section 15(1) of the 1995 Act,

(b) a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,

(c) a local authority foster parent in England and Wales within the meaning of section 105(1) of the 1989 Act, or

(d) an authority foster parent in Northern Ireland within the meaning of article 27(3) of the 1995 Order.

(3) In paragraph (1)(a) "related" means related either by blood, marriage or civil partnership.]

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Marginal Citations

M5   1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4),
        schedule 2, paragraph 9(4), the Children's Hearings (Scotland) Act 2011 (asp 1), **schedule 5**,
        paragraph 2(4) and S.S.I. 2013/211.

M6   1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

M7   S.I. 1995/755 (N.I. 2). Article 25 is amended by the Children (Leaving Care) Act (Northern Ireland)
        2002 (c.11), **section 2(1)**.

Meaning of "dependant"

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

  (a) paragraph (2) applies, or

  (b) on that day the person is a kinship carer for the child.

(2) This paragraph applies if—

  (a) the person has been awarded—

      (i) child tax credit, child benefit or state pension credit for the day in question (or for
        a period that includes that day), or

      (ii) universal credit for an assessment period that includes the day in question, and

  (b) the child is recognised to be a child for whom the person has responsibility in terms of
      that award of assistance.

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

Expressions about social security assistance

Meaning of determination of entitlement to a Scottish child payment

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

  (a) by the Scottish Ministers—

      (i) under paragraph 3 of the schedule, or

      (ii) (following a request for a re-determination) under paragraph 16 of the schedule,

  (b) by the First-Tier Tribunal for Scotland—

      (i) under paragraph 22 of the schedule in an appeal against a determination made by
        the Scottish Ministers, or

      (ii) (subsequent to such an appeal) under its Tribunals Act powers,

  (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an
      appeal against, or following a review of, a decision of the First-tier Tribunal).

(2) In this regulation, "Tribunals Act powers" means powers under Part 6 (review or appeal of
decisions) of the Tribunals (Scotland) Act 2014 **M8**.

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(3) A determination of an individual's entitlement to a Scottish child payment consists of—

    (a) a decision about whether or not the eligibility rules specified in regulation 18 are satisfied in the individual's case,

    (b) if those rules are satisfied, a decision (taken in accordance with these Regulations) about what assistance the individual is entitled to be given, and

    (c) if the determination is to be made on the basis that the individual has ongoing entitlement to a Scottish child payment, a decision about what assistance the determination is to entitle the individual to be given in the future.

Commencement Information

I8   Reg. 13 in force at 9.11.2020, see **reg. 2**

Marginal Citations

M8   2014 asp 10.

Meaning of references to specified kinds of assistance

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

    (a) child tax credit under the Tax Credits Act 2002 [M9],

    (b) income-based jobseeker's allowance under the Jobseekers Act 1995 [M10],

    (c) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007 [M11],

    (d) income support under Part VII of the Social Security Contributions and Benefits Act 1992 [M12],

    (e) state pension credit under the State Pension Credit Act 2002 [M13],

    (f) universal credit under Part 1 of the Welfare Reform Act 2012 [M14],

    (g) working tax credit under the Tax Credits Act 2002 [M15].

Commencement Information

I9   Reg. 14 in force at 9.11.2020, see **reg. 2**

Marginal Citations

M9   2002 c.21.
M10   1995 c.18.
M11   2007 c.5.
M12   1992 c.4.
M13   2002 c.16.
M14   2012 c.5.
M15   2002 c.21.

Meaning of references to assistance being awarded

[**F3**15.—(1) An individual is not to be regarded as having been awarded a kind of assistance specified in regulation 14 for a day or a period if—

(a) the award was made in error (whether or not induced by the individual), or

(b) the sum awarded to the individual for the day or the period is £0.

(2) In paragraph (1)(b), the reference to "the sum awarded" means, in a case where a deduction has been made—

(a) in respect of any liability the individual has to another person, or

(b) by way of a sanction,

the sum that would have been awarded had the deduction not been made.**]**

Textual Amendments

F3   Reg. 15 substituted (15.1.2021) by The Scottish Child Payment Amendment Regulations 2021 (S.S.I. 2021/16), regs. 1, **3**

Commencement Information

I10   Reg. 15 in force at 9.11.2020, see reg. 2

Meaning of "assessment period" in relation to universal credit

16. "Assessment period" means a period in respect of which universal credit may be payable to the individual in question in accordance with section 7 of the Welfare Reform Act 2012.

Commencement Information

I11   Reg. 16 in force at 9.11.2020, see **reg. 2**