
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 351

The Scottish Child Payment Regulations 2020

PART 2

Interpretation

General

References to the 2018 Act

4. In these Regulations “the 2018 Act” means the Social Security (Scotland) Act 2018(1).

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.

Meaning of “working day”

6. A “working day” means a day other than—
- (a) a Saturday,
 - (b) a Sunday, or
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(2).

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.

Meaning of “week”

8. A “week” means a period of 7 days.

(1) 2018 asp 9.

(2) 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.

*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.

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⁽³⁾ (see section 39 of that Act⁽⁴⁾).

Meaning of “kinship carer”

11. A person is a kinship carer for a child on a day if—

- (a) the person is a qualifying person in relation to the child within the meaning of section 72(2) of the Children and Young People (Scotland) Act 2014⁽⁵⁾, and
- (b) on that day, the child lives with the person (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, or
 - (ii) an agreement between the person, the person’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 Children (Scotland) Act 1995⁽⁶⁾,
 - (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⁽⁷⁾, 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⁽⁸⁾.

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

(3) 2012 c.5.

(4) Section 39 is amended by S.I. 2014/3229 and S.I. 2019/1458.

(5) 2014 asp 8.

(6) 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.

(7) 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

(8) 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).

(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⁽⁹⁾.

(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.

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⁽¹⁰⁾,
- (b) income-based jobseeker’s allowance under the Jobseekers Act 1995⁽¹¹⁾,
- (c) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007⁽¹²⁾,
- (d) income support under Part VII of the Social Security Contributions and Benefits Act 1992⁽¹³⁾,

⁽⁹⁾ 2014 asp 10.

⁽¹⁰⁾ 2002 c.21.

⁽¹¹⁾ 1995 c.18.

⁽¹²⁾ 2007 c.5.

⁽¹³⁾ 1992 c.4.

- (e) state pension credit under the State Pension Credit Act 2002⁽¹⁴⁾,
- (f) universal credit under Part 1 of the Welfare Reform Act 2012⁽¹⁵⁾,
- (g) working tax credit under the Tax Credits Act 2002⁽¹⁶⁾.

Meaning of references to assistance being awarded

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

(2) For the avoidance of doubt, an individual is to be regarded as having been awarded assistance for a day or period even if the sum awarded is reduced to £0 as a result of a sanction.

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.

⁽¹⁴⁾ 2002 c.16.
⁽¹⁵⁾ 2012 c.5.
⁽¹⁶⁾ 2002 c.21.