

2021 No. 494

SOCIAL SECURITY

**The Best Start Grants and Scottish Child Payment
(Miscellaneous Amendments) Regulations 2021**

Made - - - - *22nd December 2021*

Coming into force - - *23rd December 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 32(2) and 79 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 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, commencement and interpretation

1.—(1) These Regulations may be cited as the Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2021 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the Best Start Grants Regulations” means The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(b),

“the Scottish Child Payment Regulations” means The Scottish Child Payment Regulations 2020(c).

Amendments to Best Start Grant Regulations

2. After Part 2 of schedule 1(d) of the Best Start Grants Regulations (determination without application), insert—

(a) 2018 asp 9.
(b) S.S.I. 2018/370.
(c) S.S.I. 2020/351.
(d) As relevantly amended by S.S.I. 2019/110.

“PART 3

Competing Claims

Multiple applications in respect of the same child

6.—(1) Where two or more individuals have applied for early years assistance in respect of the same child, the Scottish Ministers are to make a determination of entitlement in accordance with sub-paragraphs (2) to (5).

(2) Where the Scottish Ministers decide that two or more individuals are eligible for early years assistance in respect of the child, they must apply the rules in sub-paragraphs (3) to (5) to determine which of the individuals is to be entitled to that assistance.

(3) The rules are that—

- (a) where only one individual has been awarded child tax credit, state pension credit or universal credit for the day, or assessment period that includes the day, in question (and the child is recognised to be a child for whom the individual has responsibility in terms of that award of assistance), unless the Scottish Ministers decide otherwise in pursuance of the rule in sub-paragraph (5), that individual is entitled to early years assistance,
- (b) where none of the individuals have been awarded assistance as described in sub-paragraph (3)(a), and only one individual has been awarded child benefit for the day in question (and the child is recognised to be a child for whom the individual has responsibility in terms of that award of assistance), that individual is entitled to early years assistance,
- (c) where the individuals are kinship carers for the child, and none of them have been awarded any kind of assistance as described in sub-paragraph (3)(a) or (3)(b), the individual whose determination is to be made first is entitled to early years assistance,
- (d) where one individual has been awarded child benefit for the day in question, and another individual is a kinship carer for the child, the individual who is the kinship carer for the child is entitled to early years assistance.

(4) For the purposes of sub-paragraph (3), the individual whose determination is to be made first is the individual whose application is to be treated as made first in accordance with regulation 4.

(5) Where—

- (a) having applied the rules in sub-paragraph (3) in accordance with sub-paragraph (2) it appears to the Scottish Ministers from information available to them that none of the circumstances described in rules (a) to (d) are true in the case of the individuals in question, or
- (b) the circumstances described in rule (a) of sub-paragraph (3) are true in the case of the individuals in question and one individual is a kinship carer for the child,
the Scottish Ministers must determine which of the individuals is entitled to the early years assistance having regard to the circumstances of the child.”.

3.—(1) Paragraph 3 of schedule 2(a) of the Best Start Grant Regulations (exception to paragraph 1(b)) is amended in accordance with paragraphs (2) and (3).

(2) In sub-paragraph (3)—

- (a) for “first came to be” substitute “is”,
- (b) for “after—” substitute “.”, and
- (c) omit heads (a) and (b).

(a) As relevantly amended by S.S.I. 2019/110.

(3) In sub paragraph (4) omit “, or the date the decision referred to in sub-paragraph (3)(b) was taken,”.

4.—(1) Paragraph 2 of schedule 3(a) of the Best Start Grant Regulations (exception to paragraph 1(c)) is amended in accordance with paragraph (2).

(2) In sub-paragraph (3)—

- (a) for “first came to be” substitute “is”,
- (b) for “after—” substitute “.”, and
- (c) omit heads (a) and (b).

5.—(1) Paragraph 3 of schedule 4(b) of the Best Start Grant Regulations (exception to paragraph 1(c)) is amended in accordance with paragraph (2).

(2) In sub-paragraph (3)—

- (a) for “first came to be” substitute “is”,
- (b) for “after—” substitute “.”, and
- (c) omit heads (a) and (b).

Amendments to Scottish Child Payment Regulations

6.—(1) Paragraph 5 of the schedule of the Scottish Child Payment Regulations (multiple determinations involving the same child) is amended in accordance with paragraphs (2) to (5).

(2) In sub-paragraph (1) for “(4)” substitute “(6)”.

(3) In sub-paragraph (3) for “sub-paragraph (4)” substitute “sub-paragraphs (4) to (6)”.

(4) In sub-paragraph (4)(a) after “assistance),” insert “unless the Scottish Ministers decide otherwise in pursuance of the rule in sub-paragraph (6),”.

(5) After sub-paragraph (5) insert—

“(6) Where—

- (a) having applied the rules in sub-paragraph (4) in accordance with sub-paragraph (3) it appears to the Scottish Ministers from information available to them that none of the circumstances described in rules (a) to (d) are true in the case of the individuals in question, or
- (b) the circumstances described in rule (a) of subparagraph (4) are true in the case of the individuals in question and one individual is a kinship carer for the child,

the Scottish Ministers must determine which of the individuals is entitled to the payment having regard to the circumstances of the child.”.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
22nd December 2021

(a) As inserted by S.S.I. 2019/157.
(b) As inserted by S.S.I. 2019/157.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (S.S.I. 2018/370) (“the Best Start Grants Regulations”) and the Scottish Child Payment Regulations 2020 (S.S.I. 2020/351) (“the Scottish Child Payment Regulations”).

The Best Start Grants Regulations make provision about early years assistance, a type of assistance that is given by the Scottish Ministers under Part 2 of the Social Security (Scotland) Act 2018 (“the 2018 Act”). These regulations amend schedules 1, 2, 3 and 4 of the Best Start Grants Regulations.

Regulation 2 inserts a provision that allows a hierarchy to be used to determine eligibility for early years assistance where there are competing claims. Determinations made in accordance with the hierarchy do not affect an individual’s right to request a re-determination under section 41 of the 2018 Act.

Regulations 3, 4 and 5 respectively widen the exceptions contained in schedules 2, 3 and 4 of the Best Start Grants Regulations that are relevant to each form of early years assistance. This allows for such exceptions to apply to any subsequent applicant who meets the child responsibility test provided in regulation 9(1) of the Best Start Grant Regulations, regardless of when they become responsible for the child.

The Scottish Child Payment Regulations make provision about a Scottish child payment, a type of assistance to be given by the Scottish Ministers under section 79 of the Social Security (Scotland) Act 2018. These Regulations amend paragraph 5 of the schedule of the Scottish Child Payment Regulations.

Regulation 6 inserts a new provision, paragraph 5(6), after paragraph 5(5) of the schedule of the Scottish Child Payments Regulations. Where there are competing claims for the same child and the same period, and a) where the existing rules at paragraph 5(4)(a) to (d) are unable to determine which of the individuals is to be entitled to the payment, or b) where the circumstances described in the existing rules at paragraph 5(4)(a) are true and one of the individuals is a kinship carer, paragraph 5(6) enables the Scottish Ministers to determine the matter having regard to the circumstances of the child.

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