
STATUTORY INSTRUMENTS

2004 No. 747

SOCIAL SECURITY

**The Children (Leaving Care) Social Security
Benefits (Scotland) Regulations 2004**

Made - - - - *11th March 2004*
Coming into force - - *1st April 2004*

Whereas a draft of these Regulations has been laid before Parliament in accordance with section 6(9) of the Children (Leaving Care) Act 2000^{M1}, and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by section 6(4), (6) and (7) of the Children (Leaving Care) Act 2000 and of all other powers enabling him in that behalf hereby makes the following Regulations:

Marginal Citations

M1 2000 c. 35.

Citation and commencement

1. These Regulations may be cited as the Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004 and shall come into force on 1st April 2004.

Entitlement to Benefits (Scotland)

2.—(1) For the purposes of section 6(2)(c) of the Children (Leaving Care) Act 2000 (exclusion from benefits of persons of a prescribed description)—

- (a) a person of the description set out in paragraph (2) is hereby prescribed unless he is a person to whom paragraph (3)(b) applies; and
- (b) a person of the description set out in paragraph (3) is hereby prescribed in relation only to entitlement to housing benefit.

(2) The description of person mentioned in paragraph (1)(a) is a person—

- (a) who is less than 18 years of age,
- [^{F1}(b) to whom a local authority in Scotland is obliged to provide—

- (i) continuing care in accordance with section 26A of the Children (Scotland) Act 1995 (duty of local authorities to provide accommodation and assistance to persons who were, but are no longer, looked after by a local authority), or
- (ii) advice, guidance and assistance in accordance with section 29(1) of the Children (Scotland) Act 1995 (duty of local authorities to provide after-care to persons who were, but are no longer, looked after by a local authority),]
- (c) who ceased to be looked after on or after 1st April 2004 and since the age of 14 has been looked after and accommodated for a period of, or periods totalling, 13 weeks or more, and
- (d) who either—
 - (i) is not living with his family, or
 - (ii) is living with his family and is provided with regular financial assistance [^{F2}under that section 29(1)].
- (3) The description of person mentioned in paragraph (1)(b) is a person—
 - (a) who falls within the description set out in paragraph (2)(a) to (d), and
 - (b) who also falls within a category of person prescribed in—
 - (i) provided the person is a lone parent, regulation 13(2)(a) (circumstances in which persons in relevant education may be entitled to income support) of; [^{F3}or
 - ^{F4}(ii)
 - (iii) paragraph 1, 2, 7, 8, ^{F5}... 11, ^{F5}... 24 or 25 of Schedule 1B (prescribed categories of person) to,

the Income Support (General) Regulations 1987 ^{M2} (“the Income Support Regulations”).
- (4) In this regulation—
 - (a) in calculating the period of, or periods, totalling 13 weeks referred to in paragraph (2)(c) no account shall be taken of any pre-planned series of short-term placements, of 4 weeks or less where the person returns to his family at the end of each such placement,
 - (b) “accommodated” means provided with accommodation by a local authority pursuant to its duties under section 25 of the Children (Scotland) Act 1995 or [^{F6}by giving effect to a compulsory supervision order and a requirement within that order of the type mentioned in section 83(2)(a) of the Children’s Hearings (Scotland) Act 2011,] but does not include circumstances where a person has been placed with his family either under arrangements made under section 26(1)(c) of [^{F7}the Children (Scotland) Act 1995 or by giving effect to a requirement within a compulsory supervision order under the Children’s Hearings (Scotland) Act 2011,]
 - (c) “family” includes any person who has parental responsibility for another person who is less than 18 years of age and any person with whom that other person was living prior to being looked after by a local authority, but does not include a local authority,
 - (d) “lone parent” has the meaning assigned to it in regulation 2(1) of the Income Support Regulations,
 - (e) “looked after” has the meaning assigned to it in section 17(6) of the Children (Scotland) Act 1995.

Textual Amendments

- F1** Reg. 2(2)(b) substituted (5.8.2016) by [The Children and Young People \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2016 \(S.I. 2016/732\)](#), arts. 1(1), **5(a)**

- F2** Words in reg. 2(2)(d)(ii) substituted (5.8.2016) by The Children and Young People (Scotland) Act 2014 (Consequential Modifications) Order 2016 (S.I. 2016/732), arts. 1(1), **5(b)**
- F3** Word in reg. 2(3)(b)(i) added (30.12.2009) by The Income Support (Prescribed Categories of Person) Regulations 2009 (S.I. 2009/3152), **regs. 1, 3(5)(a)** (with reg. 3(7))
- F4** Reg. 2(3)(b)(ii) omitted (30.12.2009) by virtue of The Income Support (Prescribed Categories of Person) Regulations 2009 (S.I. 2009/3152), **regs. 1, 3(5)(b)** (with reg. 3(7))
- F5** Words in reg. 2(3)(b)(iii) omitted (30.12.2009) by virtue of The Income Support (Prescribed Categories of Person) Regulations 2009 (S.I. 2009/3152), **regs. 1, 3(5)(c)** (with reg. 3(7))
- F6** Words in reg. 2(4)(b) substituted (24.6.2013) by The Childrens Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 20(a)**
- F7** Words in reg. 2(4)(b) substituted (24.6.2013) by The Childrens Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013 (S.I. 2013/1465), art. 1(2), **Sch. 1 para. 20(b)**

Marginal Citations

- M2** S.I.1987/1967; Schedule 1B was inserted by Schedule 1 to S.I.1996/206; relevant amending instruments are S.I.1999/2422, 1999/3109, 2000/681, 2000/1922 and 2000/1981.

Signed by authority of the Secretary of State for Work and Pensions.

Department for Work and Pensions

Chris Pond
Parliamentary Under-Secretary of State,

Changes to legislation: There are currently no known outstanding effects for the The Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004. (See end of Document for details)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe two descriptions of person to whom section 6 of the Children (Leaving Care) Act 2000 applies in Scotland. Persons to whom section 6 applies are not entitled to income-based jobseekers' allowance, income support or housing benefit ("the relevant benefits"). The first description (in paragraph (2) of regulation 2) corresponds to the category of person to whom local authorities in Scotland are obliged to provide regular financial support in terms of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (SSI 2003/608, regulation 13). This category includes 16 and 17 year old care-leavers who are receiving financial support from a local authority in Scotland. Such care-leavers are not entitled to the relevant benefits.

The second description (in paragraph (3) of regulation 2) corresponds to the category of person described in paragraph (2) and who are also lone parents or sick or disabled. Such persons are not entitled to housing benefit but will continue to be entitled to the other relevant benefits.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

Changes to legislation:

There are currently no known outstanding effects for the The Children (Leaving Care) Social Security Benefits (Scotland) Regulations 2004.