

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL FUND MATERNITY GRANT AMENDMENT REGULATIONS 2010**

**2010 No. 2760**

1. This explanatory memorandum has been prepared by the DEPARTMENT FOR WORK AND PENSIONS and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Instrument**

2.1 The purpose of this instrument is to extend the circumstances in which a person is eligible for a Sure Start Maternity Grant to those people awarded residence orders; guardians; those with whom children are placed for adoption and those who have adopted a child under a recognised adoption which takes place outside the UK. They also add fathers (or other parent) who is not the mother's partner at the time a Sure Start Maternity Grant is claimed but who are responsible for the child concerned.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 This instrument is being made following the decision of the Court of Appeal on the "Francis" case. In that case Sara Francis claimed a Sure Start Maternity Grant in respect of her nephew for whom she had been granted a residence order as the child's mother was unable to look after him. Payment was refused as having a residence order did not meet the requirements for entitlement to Sure Start Maternity Grant. She appealed to the Court of Appeal on the grounds that her situation was analogous to a person with an adoption order and not to allow a payment constituted discrimination by virtue of Article 14 of the European Convention for the Protection of Human Rights. The Court of Appeal found in favour of the claimant and granted a declaration that Ms Francis was entitled to a Sure Start Maternity Grant. The Court decided it was not possible to interpret the regulations in a non-discriminatory way and held that the Secretary of State for Work and Pensions could decide how to amend the regulations to ensure equal treatment.

4.2 In addition the current legislation does not provide for a Sure Start Maternity Grant to be paid to fathers when the mother dies in childbirth nor where a couple have never been partners and the mother leaves the baby with the natural father who does not require a residence order as his name is on the birth certificate.

4.3 This instrument makes changes to the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 to insert definitions of orders giving parental responsibility and extends eligibility to those carers with parental responsibility and to lone fathers (or other parent). They also recast the duplicate payment provisions to reflect the changes. They provide that in cases where a Sure Start Maternity Grant has been paid to the mother or member of her family, a second payment can be paid in

respect of a child to a person who has been granted a specified order or taken responsibility for a child under other arrangements such as guardianship.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- *What is being done and why*

7.1 The purpose of the Sure Start Maternity Grant is to help people on certain income related benefits or tax credits with the expenses associated with a new baby. The grant is £500 for each child expected, born, adopted or the subject of a parental order.

7.2 It is payable to claimants or the partners of claimants who have an award of Income Support, income based Jobseeker's Allowance, income related Employment and Support Allowance, Pension Credit, Child Tax Credit at a rate higher than the family element or Working Tax credit that includes the disability or severe disability element.

7.3 It is payable when the claimant, their partner or a member of the family is pregnant, or has given birth to a child, or claimant/partner has adopted a child under the age of one or has been granted a parental order following a surrogate birth. In addition the claimant or partner has to have received advice from a health professional on child health and welfare or where the claim is made in advance of the birth, maternal health.

7.4 In November 2005 the Court of Appeal gave a decision on the "Francis" case and ruled that she was entitled to a Sure Start Maternity Grant in respect of her nephew for whom she had a residence order. The Court was not satisfied that there was a rational justification for Sure Start Maternity Grants being payable to people with an adoption order whilst those with a residence order were not entitled. Guidance was immediately issued to Social Fund Decision Makers to inform them of the Court ruling to ensure that Sure Start Maternity Grants were paid to cases in an analogous situation.

7.5 This instrument extends the scheme in order to provide for other categories of carers with parental responsibility. As well as residence orders there are also other orders and arrangements that place the claimant or partner in an analogous position to natural or adoptive parents. These are those carers with guardianship, recognised adoptions carried out outside the UK and those who have a child placed with them for adoption in respect of a child under twelve months of age. Equivalent orders and arrangements made in Scotland, Northern Ireland, the Channel Islands and the Isle of Man may satisfy the entitlement conditions.

7.6 Currently there is no provision in the legislation to provide for a Sure Start Maternity Grant to be paid to a father when the mother dies in childbirth nor where two people have never been partners, the mother leaves the baby with the natural father who does not require a residence order as he is named on the birth certificate. This instrument amends the legislation to ensure equal treatment for lone fathers, and second female parents, who are responsible for the child.

7.7 This instrument also makes amendments to the duplicate payment provisions to provide that in cases where a Sure Start Maternity Grant has already been paid to the mother or member of her family, a second grant can be paid in respect of a child to a guardian, person who has been granted a qualifying order (an adoption order, residence order or parental order), has adopted under recognised adoption arrangements, or has had a child placed with them for adoption. However a second Grant cannot be made to someone who has already received one for that child or who was a member of that person's family at the time the first Grant was claimed.

7.8 This instrument also amends the provisions in relation to the prescribed time for claiming a Sure Start Maternity Grant; updates the definitions of "actual date of confinement" and "confinement" and changes the reference in the definition of "confinement" from "28" to "24" weeks for consistency with other legislation.

- ***Consolidation***

7.9 We are not consolidating the existing regulations but 'The Law Relating on Social Security' (The Blue Volumes) provides a consolidated version of the regulations and will incorporate the amendments made by this instrument. This publication is available free of charge on the internet at

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security>).

## **8. Consultation**

8.1 The regulations have been considered by the Social Security Advisory Committee who approved the regulations without requiring a formal referral. Further consultation is not required as the change is as a result of a Court case.

## **9. Guidance**

9.1 Guidance in the form of a memo will be provided to Social Fund Decision Makers as soon as possible. In addition leaflets and claim forms will also be amended.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring and review**

12.1 As the changes are minor there are no plans to monitor.

## **13. Contact**

Andrea Teale at the Department for Work and Pensions Tel: 0113 232 7801 or email: [andrea.teale@jobcentreplus.gsi.gov.uk](mailto:andrea.teale@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.