

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (BEST START GRANTS) (CONSEQUENTIAL MODIFICATIONS AND SAVING) ORDER 2018

2018 No. 1138

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) on behalf of the Scotland Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends social security legislation as a consequence of Early Years Assistance (Best Start Grants) which are being introduced by the Social Security (Scotland) Act 2018 (asp 9)¹ (“the 2018 Act”). The changes in this instrument will ensure that:
 - only claimants who live in England or Wales are eligible for the Sure Start Maternity Grant;
 - recipients of the pregnancy and baby element of Early Years Assistance who subsequently move from Scotland to England or Wales are not eligible for the Sure Start Maternity Grant.
- 2.2 The instrument also makes amendments to ensure Early Years Assistance is disregarded in reserved income-related benefits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The coming into force of this instrument is contingent upon the coming into force of Regulations made by the Scottish Ministers to introduce Best Start Grants, which will be the first Regulations made under section 32 of the Social Security (Scotland) Act 2018. This approach to commencement ensures that access to Sure Start Maternity Grants for Scottish residents will end immediately after Best Start Grants are created, so that there is no gap in provision of maternity expenses for Scottish residents and no period of overlap during which provision is duplicated. The Scottish Ministers laid draft Regulations before the Scottish Parliament on 11 September 2018².

¹ The Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

² The draft Early Years Assistance (Best Start Grant) (Scotland) Regulations 2018
http://www.legislation.gov.uk/sdsi/2018/9780111039694/pdfs/sdsi_9780111039694_en.pdf

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 This instrument extends to England, Scotland, Wales and Northern Ireland, except where otherwise specified.

4.2 The territorial application of this instrument is to England, Scotland, Wales and Northern Ireland, except where otherwise specified.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 104 of the Scotland Act 1998³ allows consequential modifications to be made to reserved law in consequence of any provision made by or under an Act of the Scottish Parliament.

6.2 Under exception 4(a) of Schedule 5, Part 2, Section F1 of the Scotland Act 1998, as amended by section 23 of the Scotland Act 2016⁴, the Scottish Parliament may legislate to provide financial assistance for maternity expenses. This devolves the payment of maternity expenses for people in Scotland, which are currently covered by Sure Start Maternity Grants (“SSMG”).

6.3 The Scottish Government are introducing Early Years Assistance for people permanently living in Scotland in accordance with section 32 of the 2018 Act.

6.4 SSMG will continue to be payable under the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (S.I.2005/3061)⁵ for people in England and Wales. The provisions in this instrument amend these Regulations to restrict eligibility to claimants living in England and Wales and to prevent duplicate payment and ensure that recipients of a pregnancy and baby grant (the first of the Best Start Grants) are not also eligible for a SSMG for the same child.

6.5 Early Years Assistance is to be disregarded as income and capital in the same way as the current SSMG is in a range of income-related benefits. This instrument therefore amends the following social security legislation:

- Income Support (General) Regulations 1987 (S.I. 1987/1967)⁶;
- Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)⁷;
- State Pension Credit Regulations 2002 (S.I. 2002/1792)⁸;

³ The Scotland Act 1998 <http://www.legislation.gov.uk/ukpga/1998/46/contents>

⁴ The Scotland Act 2016 <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

⁵ S.I. 2005/3061 <http://www.legislation.gov.uk/uksi/2005/3061/contents>

⁶ S.I. 1987/1967 <http://www.legislation.gov.uk/uksi/1987/1967>

⁷ S.I. 1996/207 <http://www.legislation.gov.uk/uksi/1996/207/contents>

⁸ S.I. 2002/1792 <http://www.legislation.gov.uk/uksi/2002/1792>

- Housing Benefit Regulations 2006 (S.I. 2006/213)⁹;
- Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)¹⁰;
- Employment and Support Allowance Regulations 2008 (S.I. 2008/794)¹¹;
- The Universal Credit Regulations 2013 (S.I. 2013/376)¹².

7. Policy background

What is being done and why?

- 7.1 The Scotland Act 2016 devolved responsibility for certain welfare benefits, and employment support, to the Scottish Parliament. Section 104 of the Scotland Act 1998 allows for modifications to be made to reserved law in consequence of any provision made by or under any Act of the Scottish Parliament. This power allows the UK Government to ensure that reserved law is up-to-date to make devolution work.
- 7.2 The SSMG is a payment of £500 to help pay for the immediate needs of a new baby if there are no other children under 16 in the family and the claimant is in receipt of a relevant qualifying benefit.
- 7.3 Responsibility for payments for maternity expenses, funeral expenses and expenses for heating in cold weather to people in Scotland was devolved to the Scottish Parliament under the Scotland Act 2016.
- 7.4 Under section 32 of the 2018 Act the Scottish Government are introducing their equivalent of the SSMG in the form of Early Years Assistance (Best Start Grants) to cover maternity expenses for people living permanently in Scotland. People living temporarily in Scotland or who do not satisfy the habitual residence test will not be eligible for Early Years Assistance.
- 7.5 The draft Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 were laid in the Scottish Parliament on 11 September 2018.¹³
- 7.6 The Best Start Grants (“BSG”) will be three cash payments providing support during key transition periods in a child’s early years. They are:
- Pregnancy and Baby Payment - £600 for a first child and £300 for any subsequent child - will help with expenses in pregnancy or of having a new child, for example a pram or additional heating.
 - Early Learning Payment - £250 – will help with costs during nursery and early learning years to support child development, for example travel costs, changes of clothes for messy play, trips out and toys for home learning.
 - School Age Payment - £250 – will help with the costs of preparing for primary school, for example a school bag, educational toys, after school activities such as swimming or football, or helping with the cost of school milk or school trips.

⁹ S.I. 2006/213 <http://www.legislation.gov.uk/ukxi/2006/213/contents>

¹⁰ S.I. 2006/214 <http://www.legislation.gov.uk/ukxi/2006/214/contents>

¹¹ S.I. 2008/794 <http://www.legislation.gov.uk/ukxi/2008/794>

¹² S.I. 2013/376 <http://www.legislation.gov.uk/ukxi/2013/376/contents>

¹³ <http://www.legislation.gov.uk/sdsi/2018/9780111039694/contents>

- 7.7 Scottish Government intends to establish the Early Years Assistance scheme in two stages. It will therefore bring forward amending regulations to create the Early Learning Payment and School Age Payment at a later date.¹⁴
- 7.8 The SSMG will continue to be paid to people living in England or Wales and to people living temporarily in Scotland who will be able to claim SSMG from their permanent address in England or Wales.
- 7.9 SSMG will not be payable to a person living permanently in Scotland, or to a person who has moved to England or Wales and has already claimed a BSG for the same child.
- 7.10 Paragraph 55 of the Smith Commission agreement¹⁵ states that “Any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment.”
- 7.11 The provisions in Part 3 of this instrument are therefore included to ensure that the Scottish Government’s Early Years Assistance, which encompass BSG, is disregarded for income and capital purposes in the same way as the current SSMG is in the following reserved income-related benefits: Income Support, Jobseeker’s Allowance (income-based), State Pension Credit, Employment and Support Allowance (income-related), Housing Benefit and Universal Credit.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 The Scottish Government consulted on draft regulations to implement the BSG between 26 March and 15 June 2018¹⁶. A response to the consultation was published 11 September 2018.¹⁷

11. Guidance

- 11.1 Guidance to DWP staff will cover procedures to deal with customer enquiries to DWP on the Scottish Government’s BSG and also ensuring that it is disregarded in the calculation of reserved benefits.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.

¹⁴ See the Policy Note on the Early Years Assistance (Best Start Grants) (Scotland)

Regulations 2018 at <http://www.legislation.gov.uk/sdsi/2018/9780111039694/policy-note/contents>

¹⁵ http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

¹⁶ <https://consult.gov.scot/social-security/best-start-grant/>

¹⁷ <https://www.gov.scot/Publications/2018/09/8713>

- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment for the amendments in this instrument has not been carried out.

13. Regulating small business

- 13.1 The amendments in this instrument do not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 As the Scottish Government take on responsibility for further welfare benefits and payments, as set out in the Scotland Act 2016, further consequential amendments will be made to ensure that reserved law is up-to-date to make devolution work.
- 14.2 The UK Government and the Scottish Government will continue to work together to ensure the safe and secure transfer of devolved welfare benefits.

15. Contact

- 15.1 Dave Annison at the Department for Work and Pensions. Telephone: 0207 449 5377 or email: DAVE.ANNISON@DWP.GSI.GOV.UK can answer any queries regarding the instrument.