

*Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**SOCIAL SECURITY**

**The Early Years Assistance (Best Start Grants)  
(Scotland) Amendment (No. 1) Regulations 2019**

*Made - - - - 2019*

*Coming into force in accordance with regulation 2*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 32(2), 43(5) and 52 of the Social Security (Scotland) Act 2018<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 98 of that Act, no consultation with the Scottish Commission on Social Security was required.

**PART 1**

**Introduction**

**Citation**

1. These Regulations may be cited as the Early Years Assistance (Best Start Grants) (Scotland) Amendment (No. 1) Regulations 2019.

**Commencement**

2. These Regulations come into force on the day after the day on which they are made.

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(1) [2018 asp 9](#). The regulation-making powers conferred by the Act include the power to make different provision for different purposes by virtue of section 96(1). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2020 ([asp 10](#)). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

### Meaning of “the principal Regulations”

3. In these Regulations, “the principal Regulations” means the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018(2).

## PART 2

### Amendments to the principal Regulations

#### Amendment of regulation 4 of the principal Regulations

4. For regulation 4(2) of the principal Regulations (when an application is to be treated as made) substitute—

“(2) In a case where, by virtue of a paragraph of Part 2 of schedule 1, a determination is to be, or has been, made without an application, references in these Regulations to the day the application is made are to be read in accordance with that paragraph.”.

#### Amendment of regulation 5 of the principal Regulations

5. In regulation 5(5) of the principal Regulations (late application: nomination of date), in the definition of “application window”, for head (i) of sub-paragraph (a) substitute—

“(i) begins—

- (aa) on the first day of the 24th week of the pregnancy that resulted, or is to result, in the birth of the child in question, or
- (bb) in a case where the child is born before the 24th week of pregnancy is reached, on the day the child is born, and”.

#### Amendment of regulation 10 of the principal Regulations

6.—(1) Regulation 10 of the principal Regulations (meaning of “dependant”) is amended as follows.

(2) For paragraph (1) substitute—

“(1) An individual (“person A”) is to be regarded as a dependant of another individual (“person B”) on a day only if—

- (a) paragraph (1A) applies, or
- (b) on that day person B is a kinship carer for person A.

(1A) This paragraph applies if—

- (a) person B 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—
    - (aa) the assessment period that includes the day in question, or
    - (bb) the assessment period that ended immediately before the assessment period mentioned in head (aa) started, and
- (b) person A is recognised to be a child or young person for whom person B has responsibility in terms of that award of assistance.”.

(3) In paragraph (2) after “to person B” insert “referred to in paragraph (1A)”.

(4) After paragraph (2) insert—

“(3) In this regulation, “kinship carer” has the meaning given in regulation 9(3).”.

#### **Amendment of Part 1 of schedule 1 of the principal Regulations**

7. In paragraph 2(1) of schedule 1 of the principal Regulations (period allowed for re-determination), for the words from “the day” to the end of the sub-paragraph substitute—

- “(a) the day that the request for a re-determination is received by the Scottish Ministers,  
or
- (b) in a case where the request for a re-determination is received by the Scottish Ministers outwith the period prescribed in paragraph 1, the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual in question has a good reason for not requesting a re-determination sooner.”.

#### **Amendment of Part 2 of schedule 1 of the principal Regulations**

8.—(1) Part 2 of schedule 1 of the principal Regulations (determination without application) is amended as follows.

(2) In paragraph 3 (determination following application in connection with another child), after sub-paragraph (5) insert—

“(5A) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the determination is made.”.

(3) After paragraph 3 insert—

#### **“Determination following official error**

4.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a best start grant in connection with a child (without receiving an application) where—

- (a) they have previously made a determination of the individual’s entitlement to the grant in connection with the child (“the original determination”),
- (b) they establish that due to an official error the original determination was wrongly made resulting in the individual—
  - (i) not being given a grant for which the individual was eligible, or
  - (ii) being given a grant of lesser value than the grant to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to the grant, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers’ determination of the individual’s entitlement to the grant.

(2) In making a determination required by sub-paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

(3) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.

(4) In this paragraph—

“best start grant” means one of the forms of early years assistance mentioned in regulation 3,

“official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone not so acting.

### **Determination following backdated award of assistance**

5.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a best start grant in connection with a child (without receiving an application) where—

(a) a determination has previously been made that the individual is not entitled to the grant in connection with the child (“the original determination”), and

(b) the Scottish Ministers establish that—

(i) following an appeal, an award of universal credit or assistance of a kind specified in regulation 11 is made that is a backdated award, and

(ii) had that award been made before the original determination, a determination that the individual is entitled to the grant in connection with the child would have been made instead.

(2) In making a determination required by sub-paragraph (1) the Scottish Ministers are to use—

(a) the information provided in the application that led to the original determination, and

(b) any other information they have obtained in connection with that application.

(3) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.

(4) In this paragraph, “best start grant” means one of the forms of early years assistance mentioned in regulation 3 and “backdated award” has the same meaning as in regulation 5.”.

### **Amendment of schedule 2 of the principal Regulations**

9.—(1) Schedule 2 of the principal Regulations (pregnancy and baby grant) is amended as follows.

(2) After paragraph 1(a) insert—

“(aa) the individual has not received, and is not due to receive, a sure start maternity grant in respect of the child.”.

(3) In paragraph 3(4) for “Since first coming to be responsible for the child” substitute—

“Since the first grant recipient applied for a pregnancy and baby grant or a sure start maternity grant in respect of the child, or the date the decision referred to in sub-paragraph (3)(b) was taken”.

(4) After paragraph 3(4) insert—

“(4A) On the day the applicant’s application for a pregnancy and baby grant in respect of the child is made, the child does not normally live with the first grant recipient.”.

(5) In paragraph 4(2)(a) after “the” insert “United Kingdom, the Channel Islands, the Isle of Man, the”.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These 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.

In particular, they amend the eligibility rules for the pregnancy and baby grant (which is a form of early years assistance). Those eligibility rules are set out in the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 (“the principal Regulations”).

Regulation 5 adjusts the definition of “application window” in the principal Regulations so that an application can be made from the 24<sup>th</sup> week of a pregnancy.

Regulation 6 amends the definition of “dependant” in the principal Regulations so that it includes dependants recognised in an award of state pension credit and people in kinship care arrangements.

Regulation 7 provides for how the period allowed for a re-determination is to be calculated where the request for a re-determination is made late and the individual is found to have a good reason for not making the request sooner.

Regulation 8 amends the principal Regulations to provide further circumstances in which a determination is to be made without an application. Regulation 4 makes a consequential amendment to the method of calculating the date of an application.

Regulation 9(2) clarifies that if an individual has already been given, or is due to be given, a sure start maternity grant in respect of a baby, the individual is not also eligible for a pregnancy and baby grant in respect of that baby. Sure start maternity grant is defined for this purpose by paragraph 10 of schedule 2 of the principal Regulations. The sure start maternity grant is the equivalent in England, Wales and Northern Ireland to the pregnancy and baby grant in Scotland.

Regulation 9(3) and (4) makes provision to restrict multiple payments where there is a change in responsibility for a child within a family unit and regulation 9(5) amends a residence rule so that habitual residence in the United Kingdom will be treated in the same way as habitual residence in the European Economic Area (EEA) or Switzerland, should the United Kingdom cease to be a member of the EEA.

A Business and Regulatory Impact Assessment was prepared in respect of the principal Regulations. These Regulations do not alter the outcome of that assessment. Accordingly, no further assessment is required.