

Social Justice and Social Security Committee

Subordinate Legislation Cover Note

27th Meeting, (Session 6), 27 October 2022

Title of Instrument:	The Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022
Laid Date:	20 September 2022
Reporting deadline:	14 November 2022
Type of instrument:	Affirmative
Motion to approve	S6M-05966

Parliamentary procedure

1. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
2. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
3. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of considering the instrument. The committee can ask the Minister and any officials questions about the SSI.
4. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
5. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

Background

6. According to the [Policy Note](#) (Annexe A), these regulations make changes to the Best Start Foods Regulations, Best Start Grant Regulations and Scottish Child Payment Regulations that set out the rules and eligibility criteria for Best Start Foods, Best Start Grant and Scottish Child Payment.
7. These benefits are collectively called the Five Family Payments. The main changes are extending eligibility for Scottish Child Payment to low income families with children under the age of 16, increasing the value of Scottish Child Payment to £25 per week per child and allowing Social Security Scotland to automatically pay Best Start Grant Early Years Payment and Best Start Grant School Age Payment to eligible people who are in receipt of Scottish Child Payment.
8. It also makes other smaller changes around eligibility across the Best Start Foods, Best Start Grant and Scottish Child Payment regulations. The regulations also correct an administrative oversight identified in the Ukraine Regulations, required to ensure parity of access to benefits upon arrival in Scotland and the rest of the UK specific to people who hold Irish citizenship. The same oversight appears in the equivalent Ukraine Regulations in England and Wales and Northern Ireland, with those administrations taking forward similar amendments.
9. Further background information and suggested themes for discussion are outlined in the SPICe paper (paper 2).

Delegated Powers and Law Reform Committee consideration

10. The DPLR Committee considered the instrument at its [meeting on 27 September 2022](#) and raised no points. The committee report detailing this meeting can be found [here](#).

For decision

11. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 14 November 2022.**
12. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

Annexe A

POLICY NOTE

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENT AND TRANSITIONAL PROVISION) (SCOTLAND) REGULATIONS 2022

SSI 2022/XXX

The above instrument is to be made in exercise of the powers in exercise of the powers conferred by section 13 of the Social Security Act 1988(), sections 64(1), 70(4) and 71(6) of the Social Security Contributions and Benefits Act 1992(), section 77(3) of the Welfare Reform Act 2012(), sections 28(2), 31(2), 32(2), 52, 79 and 95 of the Social Security (Scotland) Act 2018(), and all other powers enabling them to do so. The amending regulations amend four separate principal instruments. For the purpose of this policy note, ‘the Best Start Foods regulations’ means the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019, ‘the Best Start Grant regulations’ means the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018, ‘the Scottish Child Payment regulations’ means the Scottish Child Payment Regulations 2020 and the ‘the Ukraine Regulations’ means the Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure. As required by section 97(2) of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security and a response to the Commission’s report on the proposals is published along with the draft instrument.

Summary Box

These regulations make changes to the Best Start Foods Regulations, Best Start Grant Regulations and Scottish Child Payment Regulations that set out the rules and eligibility criteria for Best Start Foods, Best Start Grant and Scottish Child Payment. These benefits are collectively called the Five Family Payments. The main changes are extending eligibility for Scottish Child Payment to low income families with children under the age of 16, increasing the value of Scottish Child Payment to £25 per week per child and allowing Social Security Scotland to automatically pay Best Start Grant Early Years Payment and Best Start Grant School Age Payment to eligible people who are in receipt of Scottish Child Payment. It also makes other smaller changes around eligibility across the Best Start Foods, Best Start Grant and Scottish Child Payment regulations. The

regulations also correct an administrative oversight identified in the Ukraine Regulations, required to ensure parity of access to benefits upon arrival in Scotland and the rest of the UK specific to people who hold Irish citizenship. The same oversight appears in the equivalent Ukraine Regulations in England and Wales and Northern Ireland, with those administrations taking forward similar amendments.

Policy Objectives

The Scottish Government is committed to tackling child poverty and has introduced three specific benefits to provide support to low income families – Best Start Foods, Best Start Grant and Scottish Child Payment. Best Start Grant was introduced in 2018, Best Start Foods in 2019 and Scottish Child Payment in 2021. These benefits are called the Five Family Payments.

These regulations are needed to make a number of changes to the Five Family Payments, mostly around eligibility, including extending eligibility to Scottish Child Payment to families with children under 16 and introducing auto award of Best Start Grant Early Learning and School Age Payments for those who already receive Scottish Child Payment. They also make some smaller changes to make the regulations clearer, introduce some enhanced provisions and align provisions across the five family payments. The regulations also correct an administrative oversight identified in the Ukraine Regulations, required to ensure parity of access to benefits upon arrival in Scotland and the rest of the UK specific to people who hold Irish citizenship. The changes are set out below.

Best Start Grant

Changes to make sure that both couples and individuals who have a child through formal surrogacy arrangements are recognised as being responsible for that child.

Extending the definition of kinship care to make it more inclusive, recognising the important role that kinship carers play in looking after young people.

Removing the condition that the child is not looked after by the local authority in residential care, to align more closely with Scottish Child Payment and Best Start Foods.

Allowing Social Security Scotland to automatically award Best Start Grant Early Learning and School Age Payments to people receiving Scottish Child Payment without them having to apply. People who do not want to automatically receive these payments can opt out. Providing new exceptions to the rule that an individual is only entitled to the higher Best Start Grant Pregnancy and Baby Payment when they are applying for their first child, so that low income families with a new child who are more likely to be starting from scratch can receive adequate support. These groups are:

- People who have been granted refugee status, humanitarian protection, or leave under the Afghanistan resettlement schemes or the Ukraine resettlement schemes, who have a child/children from before they arrived in the UK
- People who have been forced to leave their home with a child/children due to domestic abuse
- People who have taken on responsibility for a child/children who was not their own when that child was more than 12 months old

Best Start Foods

Extending the definition of kinship care to make it more inclusive and ensure the definition of kinship care is the same across all Five Family Payments.

Changes to make sure that both couples and individuals who have a child through formal surrogacy arrangements are recognised as being responsible for that child.

Scottish Child Payment

Extends eligibility of Scottish Child Payment to low income families with children under 16.

Increases the value of Scottish Child Payment to £25 per week per eligible child.

Inserts transitional and consequential provisions so that entitlement for those aged 6 – 15 begins no earlier than 14 November.

Where a child dies payments will be made equivalent to the value of Scottish Child Payments paid in the 12 weeks prior to the child's death.

Extends the definition of kinship care to make it more inclusive and ensure the definition of kinship care is the same across all Five Family Payments.

Ensures clients continue to benefit from the discretion around timing of re-determinations and appeals by removing reference to the Coronavirus (Scotland) Act 2020 which is due to be repealed and defining coronavirus directly in the regulations.

Amends the relevant 12 week period where a claim can be restarted following a change in circumstances so that the period begins from the date of the change of circumstances instead of the date a determination is made on that change.

Allows for a child between the age of 6 and 15 to be added to an existing claim.

Removes the 4 week deadline for making the first payment following an application bringing Scottish Child Payment in line with other Scottish Social Security benefits.

Ukraine

The intention of the Ukraine regulations was to exempt from residency tests for specific benefits those coming to the UK who had fled Ukraine in relation to the Russian invasion, and who had been resident in Ukraine before 1 January 2022. The intention of this exemption was to cover all those who had fled Ukraine regardless of nationality. An oversight has been identified in relation to Irish citizens. This deficiency also appears in the equivalent Ukraine Regulations in England and Wales, and Northern Ireland.

The exemptions in the Ukraine regulations cover individuals who have been granted leave to enter or remain in the UK, or who have a right of abode. Under section 3ZA of the Immigration Act 1971, Irish citizens are normally exempt from being required leave to enter or remain in the UK, so they are not covered by the provision relating to individuals who have been granted leave to enter or remain. As defined by Section 2 of the Immigration Act 1971 (British citizens and certain Commonwealth citizens) Irish citizens are not covered by the right of abode provision.

Adding this provision in relation to those persons who do not require leave to enter or remain in the UK in accordance with section 3ZA of the Immigration Act 1971 will mean that Irish citizens are covered by the exemption as the original policy intended.

The Ukraine amendments to this instrument capture the following benefits, thereby avoiding the need for individual instruments for each respective benefit:

- Disability Living Allowance
- Personal Independence Payment
- Attendance Allowance
- Carer's Allowance
- Child Disability Payment
- Adult Disability Payment
- Best Start Grants
- Best Start Foods
- Young Carer Grant

Consultation

To comply with the requirements of section 13(2) of the Social Security Act 1988, Welsh Ministers have been consulted on the changes to Best Start Foods regulations.

The Scottish Commission on Social Security

As required by section 97(2) of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS shared their scrutiny report on 22 June 2022. The Scottish Government's response will accompany these

regulations. This follows [extensive scrutiny](#) by SCoSS of the regulations, with a number of changes made in response.

In relation to the Ukraine amendment, officials have discussed with the Commission and they have agreed to reflect this amendment with their comments and observations in the upcoming scrutiny report on the Ukraine regulations which came into force on 22 March 2022.

Stakeholder engagement

Extensive stakeholder engagement was undertaken as part of the development of the initial regulations establishing Best Start Grant, Best Start Foods and Scottish Child Payment. Ahead of drafting these regulations we consulted with members of the Five Family Payments Reference Group, which comprises third sector, NHS and local government representation. We also consulted several organisations that support survivors of domestic abuse. As a result of this consultation, we extended the right to access the higher level of Best Start Grant Pregnancy and Baby Payments to individuals who have been forced to leave the home with a child/children as a result of domestic abuse.

Impact Assessments

Although a full set of impact assessments was done to accompany each set of regulations for Best Start Grant, Best Start Foods and Scottish Child Payment, we have carried out a full set of impact assessments for these amending regulations. The following impact assessments have been completed:

- A Children's Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
- A Business and Regulatory Impact Assessment
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment
- A Data Protection Impact Assessment

In relation to the Ukraine amendment, this has not been impact assessed as it was not the policy intention to exclude clients who are Irish citizens arriving from Ukraine. Remedying this oversight in legislation is done to include Irish citizens coming from Ukraine and address the risk of legal challenge being brought arguing a violation of Article 14(read in conjunction with Article 1 of Protocol No. 1 of the ECHR) on the grounds of nationality/citizenship. UK Government are legislating to address the same gap, so the impact of not introducing the amendment in Scotland would create

inequality between people falling into this group arriving in Scotland and the rest of the UK.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and the impact of these policies on business is limited.

The Scottish Fiscal Commission's forecasts published in May 2022 already included the estimated costs of most of the changes in these regulations, but they have produced updated costings to account for the fact that the regulations will take effect earlier than had been assumed in the May 2022 forecasts, and for higher inflation since May

These new estimates are £15 million higher than the previous forecast for 2022-23 due to the regulations coming into force from 14 November, whereas previous forecasts were based on an assumption of 1 December. From 2024-25 onwards the forecast annual spending on Scottish Child Payment is around £25 million higher than in the previous forecasts due to a higher outlook for inflation.

Forecast spending on Scottish Child Payment due to these regulations

£ million	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Spending on Scottish Child Payment without these regulation	109	117	127	128	129	131
Spending on Scottish Child Payment with these regulations	219	428	466	472	473	474
Additional spend due to these regulations	110	311	339	344	343	343
Of which, spending on children aged 6 to 15, including increase to £25	99	295	322	326	326	325
Of which, cost of increase to £25 per week for children under six	10	16	17	17	17	18

The Commission's view is that the annual costs of the other changes in these regulations are likely to fall below their materiality threshold of £5 million.

Social Security Directorate

20 September 2022