

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

SOCIAL SECURITY

The Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019

Made - - - - 2019

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28, 41(4)(a), 43(5) and 52 of the Social Security (Scotland) Act 2018⁽¹⁾ 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 97(2) of that Act, the Scottish Ministers have consulted the Scottish Commission on Social Security.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 and come into force on the first Monday after the day on which they are made.

Interpretation

2. In these Regulations—
“applicant” means a person who has applied for a young carer grant,

⁽¹⁾ 2018 asp 9. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

“determination” means a determination of an individual’s entitlement under section 37 of the Social Security (Scotland) Act 2018,

“the qualifying period” means the period of 13 weeks described in regulation 5(1),

“young carer grant” means the grant provided for by these Regulations.

PART 2

Eligibility

Overview

3.—(1) A person who applies for a young carer grant is entitled to receive it if that person meets the conditions prescribed in these Regulations.

(2) Regulation 4 provides for the making of applications, including providing conditions related to the age of the applicant.

(3) Regulation 5 provides conditions relating to the care being provided and regulation 6 provides conditions relating to the person or persons being cared for.

(4) Regulation 7 provides further conditions relating to receipt of assistance and the status of the applicant.

(5) Regulation 8 provides conditions relating to the applicant’s residence.

(6) Part 3 provides timescales for some procedural matters, including situations that involve multiple applications relating to care of the same person, and provides for when the Scottish Ministers must determine that an individual is entitled to a young carer grant without an application.

(7) Regulation 12 makes provision about the assistance that an applicant is entitled to receive.

Making of applications

4.—(1) A person is entitled to a young carer grant if, on the day their application for that assistance is made, they are aged at least 16 and are under the age of 19.

(2) In a non-leap year, the birthday of a person born on 29 February is to be taken to be 28 February.

(3) An application is to be treated as made on the day it is received by the Scottish Ministers.

(4) In a case where, by virtue of a regulation 11, 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 paragraph (3) of that regulation.

(5) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

- (a) made in the form, and
- (b) accompanied by the evidence,

required by the Scottish Ministers under section 38(1) of the Social Security (Scotland) Act 2018.

(6) For the purposes of determining assistance, the period of an application is the period of 13 weeks ending with the day before the day of the application for a grant and an application in respect of any other period of 13 weeks is to be regarded as an application for a different period, despite any overlap between the two periods.

Conditions relating to the care being provided

5.—(1) To qualify for a young carer grant the applicant must have provided care, over the period of 13 weeks ending with the day before the day on which their application for a grant is made (“the qualifying period”)—

- (a) to a person or persons described in regulation 6,
- (b) for the number of hours, and in the number of weeks, described in paragraph (2),
- (c) as described in paragraph (3), and
- (d) which was not provided in the manner described in paragraph (4).

(2) The care must have been provided—

- (a) for at least 208 hours during the qualifying period, and
- (b) in at least 10 weeks during that period.

(3) The care provided must involve activity that promotes the physical, mental or emotional well-being of the person being cared for.

(4) The care must not have been provided by the applicant—

- (a) under or by virtue of a contract, unless the contract is of a kind specified by regulations under section 1(3)(a) of the Carers (Scotland) Act 2016(2) as not to be regarded as a contract for the purposes of that Act, or
- (b) as voluntary work.

Conditions relating to the person or persons being cared for

6.—(1) To qualify for a young carer grant the person or persons being cared for must, throughout the qualifying period and on the day the application for assistance is made, each be a person to whom a qualifying disability benefit is normally payable.

(2) An applicant may combine hours caring for up to three persons during the qualifying period.

(3) In paragraph (1), “qualifying disability benefit” means a disability benefit, or where applicable a component of a disability benefit, which is of a type, and being paid at a rate, that would entitle a person who cares for the recipient of that benefit and who meets the relevant qualifying conditions to—

- (a) carer’s assistance, payable under section 28 of the Social Security (Scotland) Act 2018, or
- (b) carer’s allowance, payable under section 70 of the Social Security Contributions and Benefits Act 1992(3) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4).

Further eligibility conditions

7.—(1) An applicant is not entitled to a young carer grant if, on the day their application is made, the applicant is in receipt of a benefit named in regulation 6(3)(a) or (b) in respect of any of the persons being cared for.

(2) An applicant is not entitled to a young carer grant if they have applied for a benefit named in regulation 6(3)(a) or (b) in respect of a period that includes the day their application is made, unless it has already been determined that the applicant is ineligible for that benefit in respect of that day.

(2) 2016 asp 9.

(3) 1992 c.4. Section 70 was amended to provide for carer’s allowance by articles 2 and 3 of, and paragraph 2 of the schedule of, S.I. 2002/1457. There are other amendments to section 70 that are not relevant to these Regulations.

(4) 1992 c.7. Section 70 was amended to provide for carer’s allowance by articles 2 and 3 of S.R. 2002/321. There are other amendments to section 70 that are not relevant to these Regulations.

(3) An applicant is not entitled to a young carer grant if they have previously received a young carer grant, unless the day their application is made is at least one year after the day of the application in respect of which that grant was paid.

(4) Paragraph (5) applies if—

- (a) any other person has been paid a young carer grant in respect of care of any of the persons being cared for in an application for a young carer grant, and
- (b) that grant was paid as a result of an application made during the year immediately preceding the day the applicant makes his or her application.

(5) The applicant is not entitled to a young carer grant unless—

- (a) the other person who was paid a young carer grant has died, or
- (b) the Scottish Ministers have concluded that a young carer grant should not have been paid to the other person.

(6) If an applicant has already received three young carer grants, they are not entitled to a further young carer grant.

(7) An applicant is not entitled to a young carer grant if, on the day their application is made, they are subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999⁽⁵⁾, unless the applicant falls within a category or description of persons specified in Part 2 of the schedule of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (persons not excluded under section 115 of the Immigration and Asylum Act 1999 from entitlement to various social security benefits)⁽⁶⁾.

Conditions relating to residence

8.—(1) Subject to paragraphs (2) and (3), to qualify for a young carer grant the applicant must, on the day their application is made for that assistance, be—

- (a) habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, the European Economic Area or Switzerland, and
- (b) ordinarily resident in Scotland.

(2) Paragraph (1)(a) does not apply to the following persons (if they meet the condition in paragraph (1)(b) of being ordinarily resident in Scotland)—

- (a) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28 July 1951, as extended by article 1(2) of the Protocol relating to the status of refugees done at New York on 31 January 1967,
- (b) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971⁽⁷⁾, where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the destitution domestic violence concession, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005⁽⁸⁾,
- (c) a person who has humanitarian protection granted under the rules made under section 3(2) of the Immigration Act 1971, or
- (d) a person who—

⁽⁵⁾ 1999 c.33. There are amendments to section 115 that are not relevant to these Regulations.

⁽⁶⁾ S.I. 2000/636.

⁽⁷⁾ 1971 c.77.

⁽⁸⁾ S.I. 2005/1379.