

CPAG in Scotland response to the consultation on Best Start Grant Regulations

11th June 2018



General comments

1. CPAG in Scotland warmly welcome the introduction of Best Start Grants in Scotland. As well as being more generous than the current Sure Start Maternity Grant, Best Start Grants are not limited to the first child born within a household and allow for additional payments of £250 to be made at pre-school age and again when the child starts school. This will provide an important source of support to families at a time when they may be experiencing additional costs and changes to their financial entitlements. The grants will help to protect low income households from income shocks whilst promoting the health and wellbeing of Scotland's children.

2. We are also pleased to see that many of the suggestions made by CPAG in response to the Scottish Government's 'Future of Social Security consultation' have been addressed in these draft regulations. We are particularly pleased to see that:

- **Universal credit has been included as a qualifying benefit for Best Start Grants.** Failure to do so would have increased administrative complexity and resulted in low income families missing out on much needed additional financial support.
- **Housing benefit has been included amongst the list of qualifying benefits.** This will capture low income families who had not yet been transferred to UC but who want to access the Best Start Grant before the birth of their child.
- **Pregnant women under the age of 18 are eligible for Best Start Grants.** This will bring eligibility for BSG into line with eligibility for Healthy Start while providing much needed support to young parents who are more likely to be vulnerable.
- **There is an extended window of time during which families can make an application for Best Start Grants.** This reduces the risk that low income families will miss out on their grant through lack of awareness or a temporary change in circumstances.

3. There are however, several areas where the Scottish Government's approach to eligibility and delivery of the best start grant might be improved and/or clarified. In addition to the points raised in response to the consultation questions we would ask the Scottish Government to consider the following:

- While we welcome the Scottish Government's commitment to restoring the grant for second and subsequent children, CPAG would recommend making an award of £600 in relation to each new baby, regardless of whether there are other children in household. This would help to ensure that the health and wellbeing of all children born in Scotland are protected and promoted equally while further simplifying the scheme. This is likely to be of particular importance given the UK Government's 'two child policy' which restricts the financial entitlement of families with more than two children.
- If the Scottish Government retains a lower grant amount for second and subsequent children there should be an exception made if the older child is not the claimant's birth child (kinship carers for example) to reflect the fact that most of the costs of having a new baby will have to be covered for the first time in such households. This is the approach taken at UK level from April 2018ⁱ

- Council tax reduction should be added as a qualifying benefit. This would be an added safeguard as where the claimant has a fluctuating UC, CTR regulations allows an estimate of income to be made to avoid repeated recalculations due to changing incomeⁱⁱ (and the applicant moving on and off UC). This would allow women to qualify for a Best Start Grant where if – despite being on a low income – their entitlement to UC was changeable. If there was a concern that CTR on its own would be a significant extension, an income threshold could be introduced for CTR only.
- CPAG would urge the Scottish Government to consider how access to Best Start Grant might be promoted and facilitated through universal services including the NHS, early years and education. Consideration might be given to whether information and support in making an application for a Best Start Grant birth payment could be made available as part of the universal health pathway. Midwives and health visitors, for instance, could assist with the process of applying for a best start grant. The application might also provide an opportunity for midwives and health visitors to offer new parents a referral to an income maximisation service, in line with the commitment to roll out the Healthier Wealthier Children approach.
- Parents might also benefit from support accessing the nursery age Best Start Grant. This might include, for instance, help completing and sending away the application at the point of enrolling the child for free childcare. There may also be a role for GP surgeries to publicise the Grant amongst parents who have not had any interaction with childcare services. This could be linked, for example, to administration of the second MMR vaccine which all children receive at age 3 and 4. As with the Best Start Grant awarded at birth, information on the grant should be accompanied with an offer of a referral to an income maximisation check for all parents.
- School staff should also raise awareness of the best start grant with parents at the point of school enrolment and through ongoing communications.

Question 1

We have proposed that applicants must be habitually resident in Scotland to qualify.

Do you agree with this approach?

4. While we do not disagree with the approach we are concerned that the current wording of the regulations may lead to some confusion.

5. Currently, under UK law, applicants must be “habitually resident” in the Common Travel Area (UK, Republic Of Ireland, Channel Islands or Isle of Man) in order to receive the qualifying DWP benefits, which specifically includes having a right to reside. Case law has found “habitually resident” to mean being in the UK for an appreciable period (usually 1 to 3 months) and having a settled intention.

6. The draft regulations state that an applicant must be “habitually resident *in Scotland*” in order to receive a Best Start Grant. The consultation document, however, notes that “*In practice, residence will usually already have been established in relation to the qualifying benefits.*”

7. There is the potential for this to cause confusion in relation, for example, to applicants who have recently moved to Scotland from another part of the UK. Such applicants might be habitually resident in the UK but have only just arrived in Scotland. The consultation paper

appears to accept a qualifying benefit at a Scottish address would be sufficient but this could be specified in the regulations.

8. The Scottish Government should also consider whether the regulations can allow for those in exceptional need to access BSG despite not being able to establish habitual residence. Several cases received through CPAG's Early Warning System show that women who have lived in Scotland for many years can be left without a right to reside as a result of relationship breakdown and domestic abuse or that they are incorrectly deemed not to have a right to reside as a result of DWP error

A pregnant EU national has no income at present having left her ex-partner due to domestic abuse. She claimed JSA, which stopped after 6 months and her claim for HB has been refused, placing her at risk of eviction from her temporary accommodation. However it would appear that the client should have a permanent right to reside or have retained worker status which would entitle her to means-tested benefits.

9. More information is also required on the 'separate residence test' for under 18s described in the consultation document (para 29(c)). CPAG seeks reassurance that there will be no separate "right to reside" requirement in relation to the Best Start Grant for under 18s. Cases from CPAG's early warning system provide numerous examples of under 18s who have failed the habitual residence test for DWP benefits due to not having the right to reside. This has been a particular issue for young EEA nationals who are refused the right to reside despite having been in the UK/Scotland for several years.

An EU national was advised to claim IS by the jobcentre because she is pregnant. The claim was refused despite it being apparent that the client has a permanent right to reside as she has been in the UK for more than 5 years as the family member of a worker. The DWP advised the client to ask for a reconsideration of the decision and to submit her father's work history, but the father is not willing to provide the necessary information.

Question 2

There are two alternative responsibility tests set out in the consultation:

1) receipt of Child Benefit and, where relevant, a care order; or

2) a test based on receipt of either Universal Credit or Child Tax Credit, or Child Benefit.

Which is your preferred test, test 1 or test 2?

CPAG supports Test 2.

10. Overall, CPAG believe **Test 2** is preferable. DWP or HMRC must establish that a person is living with a child before they make a payment of CTC or UC and it is probable that the person living with the child is more likely to have to meet the costs the Best Start Grant is intended to cover.

11. Applicants who are not in receipt of CTC or UC (perhaps as a result of lack of awareness, administrative difficulties or delay) will still be able to establish their entitlement through receipt of child benefit (which is normally paid to the person responsible for the child, even if s/he is not living with them)

12. Consideration should be given to whether the deadline for applications could be extended until the outcome of relevant UK benefit applications or challenges has been decided. It is our understanding that a person who experiences delays or other problems in relation to accessing one of the passported benefits during the period in which they would otherwise be eligible for a Best Start Grant could not access their grant subsequently (when their entitlement to a passported benefit had been confirmed) unless they had made an application for it during the normal six month window. This is in some ways less favourable than the current system under which you must claim Sure Start Maternity Grant (SSMG) within 3 months of birth if waiting for a qualifying benefit, but a second application made (more than 3 months after birth) after the qualifying benefit is awarded can be backdated to the date of the first application

13. If test 2 is employed, however, it is necessary that the requirement that the child not be looked after by the local authority is removed from the draft regulations. Para 33 of the consultation states that “we propose to pay the BSG to kinship carers”. However, the regulations (7(1)(c) specify that an applicant can only be regarded as having parental responsibility if the child is *not looked after*. In effect this would mean kinship carers of looked after children are excluded from Best Start Grants – despite the fact that some kinship carers of looked after children can get UC (if permanence order is in place) or CTC (as long as not accommodated or maintained out of public funds).

14. As the regulations are drafted, **Test 1** is slightly unclear. There is, for instance, no definition of “parent” leaving it unclear whether the definition includes step-parents or whether it is restricted to biological parents.

15. Furthermore, Test 1 would exclude ‘informal’ kinship carers who do not have a kinship care order in place. Not all kinship carers have such an order, which has to be acquired via the courts (the legal costs associated with this process which may be off-putting or prohibitive).

16. Also, if Test 1 is employed, appointed guardians should be included on the list of persons with parental responsibility (currently draft reg 7(1)(a)). Guardian’s allowance should be used to identify appointed guardians. Guardian’s allowance is payable where both parents have died/cannot be traced and would extend eligibility to more ‘informal’ kinship carers where HMRC has already accepted circumstances.

Question 3

We have proposed that qualification by UC should be an award of more than £0 in the month before or the month in which the application is made.

Do you agree with this approach?

17. There is a concern that the term “an award of more than £0” could lead to problems for people on UC who have been sanctioned, or have deductions. According to DWP Guidance, sanctions can result in £0 entitlement – although DWP guidance states that this should not interfere with entitlement to passported benefitsⁱⁱⁱ.

“Sanctions reductions are applied after taking earnings and unearned income into account. If there is insufficient Universal Credit remaining after this, to take the full sanction amount, the sanction reduces the award to nil...The claimant remains

entitled to passported benefits in the same way as they would have, if the sanction was not applied.”

The wording used in the regulations and any subsequent guidance should make this clear.

Question 4

We have proposed that in cases where the parent is under the age of 16, or is 18 or 19 and the grandparent (or another carer) is still in receipt of tax credit or UC because the parent is in training or non-advanced education, the grandparent or carer will be the eligible person.

Do you agree with this approach?

18. CPAG would ask the Scottish Government to consider extending this provision to ensure all under 20s were eligible for a best start grant. This would simplify current position where under 18s can claim in own right but dependent under 20s need someone else to claim on their behalf.

19. There is also a need for clarification in relation to the age of claimants and when they stop being eligible for a grant. Currently the draft regulation state that it is the claimant’s age on the date of application that should be taken into account. CPAG believe it would be fairer to specify that the applicant should be or have been under 18 (or 20 for dependents) at some point during the application window. This would ensure that all those eligible would benefit from the extended application window

20. There should be a provision so that when a dependent young mother claims in own right by mistake, a later claim by the grandparent (or other carer) should be linked with that first application to ensure they do not miss out due to the time limit. For instance, if a 15 year old claims a BSG within 3 months but is refused because they are too young, the person responsible for that 15 year old should be able to make a claim even outside the normal six month window. This would be an important step to ensure families do not miss out on their awards because of the complexity of eligibility criteria.

Question 5

Do you think that the draft regulations (Annex A) are likely to meet the policy intent set out in this document?

Question 6

Can you identify any potential unintended consequences of the regulations?

21. CPAG believe changes to the wording of the regulations could provide reassurance in relation to the right of applicants to have awards made in cash rather than in kind.

22. The draft regulations currently state that *“If the Scottish ministers offer to give an individual some or all of the value of a grant in a form other than money and the individual agrees to be given the grant in that form, the grant is to be given in that form, unless the individual withdraws agreement before the grant is given”*. While we welcome the implication that a cash payment will be the default arrangement, we would have welcome this to be explicitly stated in the regulations. For example, *“If an individual asks for some or all of the grant to be given in a form other than money, Scottish ministers may decide to give the grant in that form.”*

Question 7

Can you identify any gaps in the regulations?

23. CPAG believe that maternity allowance should be added as a qualifying benefit where the claimant does not have a partner.

24. Maternity allowance is paid to low income women in low paid, insecure employment during the maternity women. If these women are single (and therefore do not have a partner in receipt of one of the listed qualifying benefits) and are not eligible to receive help with housing costs (and therefore not in receipt of UC or HB) they would not currently be eligible for a Best Start Grant.

25. This is likely to affect a small group of women (only around 700 women in Scotland claiming maternity allowance – the overwhelming majority of whom will have housing costs or a partner). However, these women are unlikely to have other income or savings and could therefore be in great need of a Best Start Grant.

An adviser has two clients who are both pregnant with their first child and have no housing costs. The client who is receiving maternity allowance (MA) is not entitled to UC (and therefore a BSG) because her maternity allowance is taken into account in full in the UC calculation. This will be the case before and after the baby is born. The client who is receiving statutory maternity pay (SMP) is entitled to UC because although SMP is paid at the same rate as maximum MA, SMP is treated as earnings and therefore only partially taken into account in the UC calculation. Maternity allowance is paid to people who have not worked for long enough or earned enough to satisfy the conditions for SMP, so parents with less stable employment and lower earnings will not be able to access assistance from the BSG.

26. There should also be provision to ensure students are not precluded from accessing Best Start Grants. Under the current system students are eligible if they are in receipt of child tax credit. Under UC however, some will miss out. Consider for example a lone parent with one child, (not liable for rent) in receipt of student loan which brings her income just higher than the UC maximum amount for 8/9 months of term-time. If the six month application window for a Best Start Grant fell during the 8/9 month period she would not be eligible for an award (see example in footnote)^{iv}.

27. Adding receipt of Independent Student's Bursary (which is means-tested support from [Student Awards Agency Scotland](#)) to the list of qualifying entitlements would allow this group to be identified as eligible for a Best Start Grant.

Question 8 (a)

We have proposed that requests for a BSG re-determination should be made within 31 calendar days of receipt of notification of the original determination. Do you think that this is an acceptable time period?

28. Yes, as long as late requests are accepted with good reason as specified in the Social Security (Scotland) Act.

Question 8 (b)

We have proposed that a BSG re-determination should be processed within 15 working days of receipt of a request. Do you think that is an acceptable time period?

29. Yes, as long as there is a provision to allow claims to be re-determined or re-claimed later if the individual is waiting for a qualifying benefit which is subsequently awarded.(see para x)

30. We would appreciate further clarity from the Scottish Government about whether an individual could make a second application for a BSG if they subsequently receive a qualifying benefit backdated to the period in which an original BSG application failed. See para x above.

Question 9 Equality Impact Assessment: Are you aware of any impacts we have not identified?

31. We are concerned that asylum seekers are currently excluded from SSMG and BSG as persons subject to immigration control. Those in receipt of [asylum support](#) from Home Office get a £300 maternity payment. However, they are entitled to [free childcare place](#) for two year olds and free school meals. Consideration could be given to allowing a maternity payment top-up to £600 and extending school/nursery payment to this group. They do not get qualifying benefits – asylum support would need to be added as a qualifying benefit. (NB not to be confused with those who have ‘no recourse to public funds’ – BSG is expected to be listed as such – asylum seekers have different conditions).

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ⁱ <http://www.legislation.gov.uk/ukxi/2018/307/regulation/3/made>

ⁱⁱ <http://www.legislation.gov.uk/ssi/2018/69/regulation/3/made>

ⁱⁱⁱ DWP Sanctions Guidance, updated 31st January, 2017

http://data.parliament.uk/DepositedPapers/Files/DEP2017-0556/103_Sanctions_v6.0.pdf

^{iv} Student example: University student with a child: loan is £6750. For UC purposes, this is divided over 8 or 9 months of academic year with a disregard of £110 a month

= £843.12 over 8 months or £737.22 over 9 months unearned income for UC:
not entitled to UC if income exceeds maximum UC.

UC Maximum amount = £251.77 (£317.82 if age 25+) + £231.67 child
= £483.44 (£549.49 if age 25+).

Single students with a child but not liable for rent would not be entitled to UC, so excluded from BSG.

If liable for rent, housing costs element included in UC, so most students with a child and liable for rent would be entitled to some UC, unless low rent.