



Citizens Advice Scotland response Early Years Assistance Consultation on Best Start Grant Regulations June 2018

Citizens Advice Scotland (CAS), our 60 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2015/16 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with over one million advice issues. With support from the network clients had financial gains of over £120 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.

Introduction and context of response

Citizens Advice Scotland (CAS) welcomes the opportunity to comment on the draft regulations for Best Start Grant. In general, CAS welcomes the introduction of this benefit, and the expansion from the current Sure Start Maternity Grant to include payments at the time of children starting nursery and school where parents will incur additional costs. We also welcome increases to the value of the payment compared with the current system.

In 2016/17, Scotland's CAB network advised clients on 1,009 new issues related to the Sure Start Maternity Grant.

Q1. We have proposed that applicants must be habitually resident in Scotland to qualify. Do you agree with this approach?

Yes, CAS agrees that requiring applicants to be habitually resident in Scotland is a reasonable requirement. As set out in the consultation document, the test for establishing this – an applicant having their main home in Scotland, having an intention to keep living there, and be legally entitled to be in Scotland – is sensible. As some of this will already be established by virtue of being in receipt of a qualifying benefit, it should not represent an onerous barrier on applicants.

Q2. 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?

Citizens Advice Scotland prefers test 2 set out in the consultation document. This test has two significant advantages. Basing eligibility on Child Tax Credit or

Universal Credit should help ensure a safeguard against concerns raised about cases where the partner receiving Child Benefit is not in reality the main carer.

It also means that it is more likely that kinship carers are eligible to receive Best Start Grant for children in their care, given the broader range of benefits which would capture a greater number of kinship carers with informal arrangements than the current arrangements. CAS particularly welcomes the exemption introduced into the regulations (regulation 3) that would allow a kinship carer to receive the Best Start Grant even if the child's parents had already received one. This will cover situations where a new parent struggles to cope and a relative assumes care for the child and would ensure that they can access support at a time of need.

However, CAS would also recommend that kinship carers who have the care of Looked-After Children where the local authority pays Kinship Care Allowance in accordance with section 110 of the Adoption and Children (Scotland) Act should also be eligible to receive Best Start Grant. These kinship carers are not eligible to receive Child Benefit or Child Tax Credit, so may be otherwise ineligible to receive the Grant as they are not receiving any of the current qualifying benefits. Whilst this is only the case in a relatively small number of local authorities, it will affect a significant number of kinship carers.

In addition, CAS would suggest that further consideration is given to ensuring that, wherever possible, all informal kinship carers are able to qualify, as it is likely that they will be in need of exactly the type of support provided by the Best Start Grant.

For instance some local authorities enable kinship carers who do not have a formal order in place to notify social work of the arrangement, which enables them to receive other passported benefits, such as discounted leisure services. Through the Kinship Care Advice Service for Scotland¹, CAB advisers are experienced in providing information and support to informal kinship carers, and well-placed to help them access these alternative arrangements.

Q3. 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?

No, CAS believes that due to the way full service Universal Credit operates that it would not be necessary to include the qualification that there should be an award of more than £0, as under those circumstances a person's UC claim would be closed. As adding additional qualifications makes it less straightforward to establish eligibility for individuals and advisers we would recommend that Universal Credit is included as a qualifying benefit with no further qualification.

Whilst it was the case with the earlier 'live service' version of Universal Credit that a person's claim was kept open for six months even if their income was too high to receive an award, under the full service version a person would be required to claim

¹ <http://www.kinshipcarescotland.org.uk/>

Universal Credit online again². This would mean that, aside from those receiving the 'live service' version of UC, people whose income meant that they would receive an award of £0 would not be counted as a UC claimant and would not be eligible for Best Start Grant in any event. It would appear that the 6% of the UC caseload referred to in the consultation document as receiving a £0 award would be on the 'live service' version of Universal Credit.

The 'live service' version of Universal Credit is being discontinued³, and no new claims to this version of the service have been taken since 31 December 2017. As a result, that section caseload will reduce over time, with remaining claimants converted to full service UC as part of the 'managed migration' which is planned to commence prior to the introduction of Best Start Grant. It would appear that the proportion of the caseload referred to above will reduce if not disappear in the medium term.

Given that this additional qualification would appear unnecessary, CAS would recommend removing it, to make the eligibility criteria more straightforward.

Q4. 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?

In the case of under 16s who become parents, the approach proposed would prevent delays in payments being made, and would encourage support from their family. We also accept the rationale that it may be helpful for parents of this age to have the support of an adult in spending the grant.

With regard to 18 and 19 year olds who would be otherwise ineligible for the Best Start Grant due to being in training or non-advanced education (and as a result not being able to receive tax credits, Universal Credit or a qualifying benefit), being able to gain access to it due to their own parents' (the child's grandparents) receipt of a qualifying benefit is a way to provide additional access to a group of young people who would benefit from receiving the Grant. However, in contrast to the situation with under 16s, we would recommend that the payment is made to the child's parent(s), rather than the grandparents, as the need for the support of an adult in spending the grant does not apply to this group in the same way.

An alternative method of allowing this group to access Best Start Grant would be simply to include being 18 or 19 and in training or non-advanced education as

² See sections 8, 8.1 and 8.2 of Universal Credit: different earning patterns and your payments (payment cycles) guidance - Department for Work and Pensions, February 2018
<https://www.gov.uk/government/publications/universal-credit-different-earning-patterns-and-your-payments/universal-credit-different-earning-patterns-and-your-payments-payment-cycles#claiming-universal-credit-within-6-months-of-your-previous-claim-ending>

³ Statement from Secretary of State for Work and Pensions, Universal Credit, 23 November 2017 – House of Commons Hansard <https://hansard.parliament.uk/Commons/2017-11-23/debates/36EF5FEE-7FB1-4841-A242-7625ED73FCA0/UniversalCredit>

qualifying criteria for the Best Start Grant, regardless of whether the child's grandparents receive a qualifying benefit. This would make the process of applying more straightforward, and would avoid difficulties in situations where the relationship between the new parent and the child's grandparents is strained or estranged. Additionally, it could be argued that the financial circumstances of an 18 or 19 year old in training or non-advanced education would mean that they would be likely to require the support of Best Start Grant due to being on a low income, regardless of the child's grandparents' circumstances.

Q5. Do you think that the draft regulations (Annex A) are likely to meet the policy intent set out in this document?

Q6. Can you identify any potential unintended consequences of the regulations?

The draft regulations are likely to meet the policy intent aside from in areas identified in question 7 below, and elsewhere in this response.

Q7. Can you identify any gaps in the regulations?

As mentioned in our responses to questions 8a and 8b below, there is no mention in the regulations of the timescales for making a request for a re-determination, nor the timescale for the agency to make a decision on the re-determination request. It is important that these timescales are set out in law, and provision is made in the Social Security (Scotland) Act for these to be made in regulations. CAS would recommend these are either added to the Best Start Grant regulations, or introduced in a separate set of regulations related to timescales for re-determinations for all devolved benefits. We would welcome clarification of the Scottish Government's intentions on this issue.

The illustrative regulations, do not specify in what form, or accompanied by what evidence, a valid application for Best Start Grant would need to be made, save for a provision that refers to it being set out in regulations made under section 20(1) of the Act. As with the above issue, we would welcome clarification on whether it is intended for the form of application for Best Start Grant to be added to these regulations, or made in a separate set covering applications for all devolved benefits.

Whilst CAS understands the Scottish Government's policy intention that full details should be included in regulations to 'allow for a flexible and responsive system', the requirements should be made as clear as possible to assist individuals to apply for the Grant without assistance, and to be clear what accompanying evidence is required for a valid application. CAS would recommend that the Scottish Government consult on the details of the application process. We also recommend that the social security agency promotes the application requirements widely using an inclusive communication standard, once the Best Start Grant is introduced.

The illustrative regulations propose that the application window for the Nursery and Early Learning Grant runs from when the child turns 2, to when they are aged 3

years, 6 months. Eligibility for the School Age Grant is proposed to be from 1st of June in the year the child will normally start school. Therefore there is a gap between the age of 3 ½ and the child starting school where they may enter nursery or early learning, but would be ineligible for a Grant.

To ensure that individuals can receive the Grants when they are most needed, as opposed to having to apply for them many months before the start of nursery or school, we would suggest the Scottish Government consider making adjustments to ensure that otherwise-eligible parents retain entitlement if their child begins nursery after the age of 3 ½; and to extend eligibility to parents of children who request to defer the start of school by a year.

Q8a. 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?

Citizens Advice Scotland would recommend that the timescale to make a re-determination request should be extended to six weeks (42 days). This would enable individuals to gather and submit further evidence, as well as being able to seek and receive independent advice if they need it. This is challenging in the current reserved benefits system, where the timescale is set at four weeks, and consultation with CAB advisers has suggested that six weeks would be a more appropriate period across the new Scottish social security benefits.

CAS has previously recommended that, under the new Scottish social security system, there should be statutory time limits for an internal review to be requested as well as for the agency to make a re-determination. We had recommended that the periods for both could have been set out in the Social Security Act to provide consistency. Although we accept the Scottish Government's rationale for not doing so was that different periods might be appropriate for different benefits, CAS believes it would be beneficial to have consistency across the new social security system if possible.

CAB evidence has revealed that there is room for improvement in the timescales within which a claimant must challenge a decision. In a survey carried out by CAS on Mandatory Reconsideration, two advisers raised their concerns:

“There is not enough time to get supporting evidence [at mandatory reconsideration stage]. The onus is on the client but a lot of health professionals will not supply a letter unless it is requested [by DWP]. Clients are disadvantaged as they feel they are not believed so need to get medical evidence but are unable to do so.”

“Unfortunately the majority of cases are not successful at mandatory reconsideration without medical evidence (and more than 50% are won at tribunal).”

As the Scottish Government has recognised, advice and advocacy will play a key role in supporting the new Scottish social security system, so processes must be

designed with this in mind, allowing enough time for people to access services and book appointments with advisers.

Although it is important to ensure that there is enough time to gather supporting evidence and access advice, it is also important that a timescale exists, otherwise claimants will be less likely to act on a decision while it is still relevant to their current circumstances and condition. Whilst many of the issues relate to Personal Independence Payment rather than Sure Start Maternity Grant, the underlying problems are the same, and having a consistent approach would be beneficial.

Therefore, CAS recommends that an internal review request, including any additional evidence the individual wishes to submit, should be returned to the Agency within six weeks of the date on the decision letter. In addition to this, as is the case under the current mandatory reconsideration process, if the six week deadline is missed then the Agency should use its discretion to allow reasonable late requests.

As detailed in our response to question 7 above, the timescale for making a request for a re-determination does not appear in the draft regulations attached to the consultation document. CAS would welcome clarification on whether it is intended to insert this into the regulations, or whether these are to be made in alternative regulations, in order to meet the requirement to do so in section 41(4) of the Social Security Act.

Q8b. 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?

Citizens Advice Scotland would consider that a limit of 15 working days to make a re-determination on a Best Start Grant application is an acceptable time period.

CAS has previously recommended that, under the new social security system, there should be statutory time limits within which the agency must return an internal review decision to the claimant. We have recommended that decisions should be returned as soon as is practicably possible, but no longer than four weeks.

In light of this, we welcome the commitment to be able to make a re-determination in a shorter period (three weeks), and would be content for that to be set as a limit in statute.

In general, setting a statutory time limit for a re-determination to be made is important in the context of experience of the current reserved benefits system. CAS has previously raised concerns that no statutory time limit exists within which the DWP must provide a decision in response to a mandatory reconsideration request⁴. The DWP indicated that a mandatory reconsideration should be processed within 14 working days, although data on the time taken to reach a decision has been

⁴ Response to Social Security Advisory Committee Consultation on Decision Making and Mandatory Reconsideration – Citizens Advice Scotland, March 2016 <http://www.cas.org.uk/publications/social-security-advisory-committee-consultation-decision-making-and-mandatory>

described by the Work and Pensions Committee as “sporadic and incomplete”⁵. Department ‘targets’ do not constitute a time limit, and in reality some claimants can wait weeks to receive a decision. This presents a problem both for claimants and for advice agency staff, who do not know how long to wait before contacting the DWP regarding a reconsideration request.

Additionally, an individual cannot lodge an appeal to a tribunal until their re-determination request has been received, which creates a barrier to justice if the re-determination is not carried out in a timely manner.

As detailed in our response to question 7 above, the timescale for making a decision on a re-determination does not appear in the draft regulations attached to the consultation document. CAS would welcome clarification on whether it is intended to insert this into the regulations, or whether these are to be made in alternative regulations, in order to meet the requirement to do so in section 43(5) of the Social Security Act.

Additionally, we would welcome sight of the text of the proposed regulation, as the wording in the consultation document refers both to the timescale applying to ‘[making] the fresh determination’ and ‘processing’ the re-determination which could be taken to mean different things.

Q11. Can you identify any business related impacts not identified?

CAS agrees with the acknowledgement in the Business and Regulatory Impact Assessment that “the introduction of Scottish benefits could cause additional requests for information and support from existing advice services.” As detailed in our response to the Scottish Government’s 2016 consultation on social security⁶, this is for a number of reasons:

- The introduction of a new system in Scotland – alongside the UK system – has the potential to increase complexity for claimants
- Changes to benefits make clients concerned, as recent changes have involved reassessments and/or reductions in payments
- Two substantial benefit changes – Universal Credit and Personal Independence Payment – are still be rolled out to hundreds of thousands of claimants in Scotland. Demand for advice on these issues will inevitably increase at the same time as the new Scottish system is embedded
- Tens of thousands of claimants are likely to be worse off as a result of the UC and PIP roll out^{7 8 9}

⁵ Benefit delivery: Fourth Report of Session 2015-16 – UK Parliament Work and Pensions Committee www.publications.parliament.uk/pa/cm201516/cmselect/cmworpen/372/372.pdf

⁶ See pages 177 - 181, A New Future for Social Security consultation – Response from Citizens Advice Scotland, October 2016 https://www.cas.org.uk/system/files/publications/social_security_consultation_-_response_from_citizens_advice_scotland.pdf

⁷ P. 232, Green Budget 2016 – Institute for Fiscal Studies <https://www.ifs.org.uk/publications/8129>

⁸ Universal Credit in East Lothian: Impact on Client Income – Musselburgh and Haddington Citizens Advice Bureaux, August 2017 https://www.cas.org.uk/system/files/28.09.17_report_for_website.pdf

- The move to digital public services will cause access problems to those who lack online access and skills¹⁰

With particular regard to the Best Start Grant, there is the potential for increased demand for advice from people who may be eligible for the Nursery Payment and School Payment, which do not currently exist in the Sure Start Maternity Grant.

Advisers commented on the impact that these factors would have on the demand for their services:

“More confusion and help needed, with separate systems running in parallel. Clients now do not always know what benefits they are receiving so the new powers will add complexity.”

“The confusion resulting from the changes will mean much greater numbers seeking advice and help.”

“They will be anxious about losing their benefits or having to claim again under a new system. They will also be worried that they will be paid less or there will be a delay in payment.”

“Even more complicated for advisers to give correct advice.”

“This will definitely lead to an increase in enquiries as clients try and get used to another new benefits system and more financial resources will be required by CABx without having hopefully to go through all the extra work we have to do to access funding.”

While advisers were very clear about the impact of changes on the need for advice, they also saw opportunities to improve the system that would help to support their work and potentially to reduce the need for advice. However, it must be noted that advisers saw this as a long-term ambition. Advisers commented:

“I believe that, so long as we adopt a caring and holistic approach, then the benefits to clients (and CAB) will be huge.”

“If the proposed changes are made it is likely benefit enquiries would increase in the short term but ideally long term we'd see more people out of poverty and potentially lower demand on services.”

The changes to the UK benefits system from 2010 may provide a relevant example of the impact of changes to benefits on the demand for advice. In the period, 2011/12 to 2014/15, bureaux advised on 93,000 *additional* new issues compared to what would have been expected under 2011/12 levels – this equates to around 600

⁹ Up to 31 October 2017, 16,970 claimants in Scotland were not awarded PIP under normal rules after undergoing a DLA to PIP reassessment. Response to Freedom of Information request, Department for Work and Pensions, May 2018 <https://assets.documentcloud.org/documents/4493586/Letter-From-Department-of-Work-and-Pensions.pdf>

¹⁰ Disconnected: Understanding digital inclusion and improving access – Citizens Advice Scotland, February 2018 https://www.cas.org.uk/system/files/publications/cas_disconnected_report.pdf

additional benefit issues every week since the implementation of the welfare reforms. In that three year period, bureaux advised on over 666,000 new benefit issues in total.