



**Submission from the Children's Institute, University of Cape Town
on the Draft Regulations to the Social Assistance Act
as published for comment in the GG on 25 January 2021**

24 February 2021

Introduction

Thank-you for the opportunity to provide comments on the draft regulations. Our comments below are aimed at ensuring that the 'additional payment' for orphans in the care of relatives achieves its aim of providing a solution to the decade long crisis in the foster care system; yet is not a regressive measure.

To do this, the additional payment must be:

- Accessible directly from SASSA without the need for a social worker report or a court order. If a court order or social worker report is required, it will be no different to the foster care grant and will experience the same blockages.
- Available to all family members who are currently eligible in law for the Foster Care Grant (FCG) and who stand to become ineligible when the amendment to s150(1) (a) of the Children's Amendment Bill is passed by Parliament.
- Realistic and flexible with regards to the proof that relatives must provide to prove that the child in their care is an 'orphan'.
- Close in value to the FCG, the grant it will be replacing. If considerably less in value to the FCG, it would need to be demonstrated that the new system is capable and does in fact reach significantly more children than the FCG was able to reach.

Our submission is structured into two parts – the first focusses on the additional payment for relatives caring for orphans, while the second focusses on child headed households how they can access the CSG and the additional payment if they are orphans. Recommended amendments are indicated by underlining the text while we use strikethrough for deletions.

Reg 6A Additional payment linked to child support grant for relatives caring for orphans

Draft Regs	Commentary	Proposal
<p>6A (1) In addition to the child support grant contemplated in regulation 7, a primary care giver, subject to subregulation (2), qualifies for additional payment linked to a child support grant already being received or to be received in respect of that orphan if the primary caregiver –</p> <ul style="list-style-type: none"> (a) is a relative of an orphan; and (b) cares for an orphan. 	<p>The draft incorrectly cross refers to regulation 7 instead of regulation 6. We propose a correction.</p> <p>It is not necessary to add the requirement in (b) that the primary caregiver must ‘care for an orphan’ to qualify for the additional payment. This is because the definition of primary caregiver in s1 of the Act defines a primary caregiver as ‘<i>a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily care needs of that child.</i>’ To obtain the CSG, an applicant who is not the child’s biological parent, already has to prove that he or she is the child’s primary caregiver by submitting one of the prescribed forms of proof specified in regulation 11(3). There is therefore no need to have to repeat the criteria of caring for the child.</p> <p>We make recommendations to focus Reg 6A on the eligibility criteria for the additional payment – namely that the primary caregiver must be a relative and the child must be an orphan.</p>	<p>6A (1) In addition to the child support grant contemplated in regulation 7-6, a primary care giver, subject to sub regulation (2), qualifies for <u>an</u> additional payment linked to a child support grant already being received or to be received in respect of that orphan <u>a child in their care, if -</u></p> <ul style="list-style-type: none"> (a) <u>the child concerned is an orphan,</u> <u>and</u> (b) <u>the primary caregiver is a relative of that orphan.</u> <p>the primary caregiver –</p> <ul style="list-style-type: none"> (a) is a relative of an orphan; and (b) cares for an orphan.

Draft Regs	Commentary	Proposal
<p>'Relative' in relation to an orphan means:</p> <p>(a) a parent of the child;</p> <p>(b) any other person who has parental responsibilities and rights in respect of the child ; or</p> <p>(c) a grandparent, brother, sister, uncle, aunt or cousin of the child;</p>	<p>The definition being proposed includes a parent which would potentially mean that the surviving parent who is caring for a child whose other parent is deceased, would be eligible for the additional amount. We therefore advise removing the reference to parent in the definition of relative.</p> <p>We also advise explicit inclusion of great grandparents and grand aunts and uncles as they are frequently primary caregivers of orphaned children.</p> <p>We advise removing the category of any other person who has parental responsibilities and rights in respect of the child as this category is very broad. It will for example include all caregivers who have de facto care of a child as recognised by s32 of the Children's Act – eg a neighbour or step-parent. SASSA will have no way of verifying that the person does or doesn't have parenting rights and responsibilities. If SASSA starts trying to verify by requesting court orders for this additional category, then they are likely to start insisting on court orders for all relatives. This will defeat the purpose of the 'additional payment' which is meant to introduce an alternative to the Foster Care Grant (FCG), which was dependent on a court order. The vast majority of relatives do not have court orders and will not be able to obtain them easily in the short to medium term due to guardianship not yet being accessible at the Children's Court level.</p>	<p>'Relative' in relation to an orphan means:</p> <p>(a) a parent of the child;</p> <p>(b) any other person who has parental responsibilities and rights in respect of the child ; or</p> <p>(a) a grandparent, brother, sister, uncle, aunt or cousin of the child; or</p> <p>(b) <u>a great grandparent, great aunt or great uncle of the child</u></p>

Draft Regs	Commentary	Proposal
<p>'Orphan' means an orphan as defined in section 1 of the Children's Act;</p>	<p>S1 of the Children's Act defines an 'orphan' as <i>'a child who has no surviving parent caring for him or her'</i>.</p> <p>The Children's Amendment Bill, 2020 proposes to change the definition to <i>'a child whose parent or both parents are deceased'</i>.</p> <p>Both definitions include double and single orphans.</p> <p>However, sub regulation 6A (2) below restricts the categories of orphans eligible for the additional payment in a way that single orphans will only qualify for the additional amount if they are in the care of a relative, at least one parent is deceased, and the other parent's vital status is not known to the relative.</p> <p>This restriction, will result in single orphans whose other parent has abandoned them but is known to be alive, being excluded from the additional payment. Single orphans living with a relative, whose other parent has abandoned them, are in all respects in the same position as double orphans or single orphans whose other parent's vital status is unknown. The only reason for excluding them at this moment in time, is budgetary.</p>	<p>Support with the proviso that we would like to see the eligibility criteria for the additional payment extended with time to match the more inclusive definition of orphan in the Children's Act.</p>

Draft Regs	Commentary	Proposal
<p>6A (2) A primary caregiver contemplated in subregulation (1) who applies for and additional payment in respect of the orphan must produce proof that the child is an orphan in the form of;</p> <p>(a) certified copies of the death certificate of the child's parents; or</p> <p>(b) where the death certificate of another parent of the child cannot be obtained by the applicant, where the child who has both parents an affidavit by the applicant attesting to the death or the unknown status of the child's other parent.</p>	<p>We propose a re-write of this sub-regulation to make it clearer. At the moment s2(b) is not clear.</p> <p>Sub-regulation 2(b) needs to cater for all the possible scenarios where an applicant cannot produce the second death certificate. These include:</p> <p>(i) they do not know who the other parent is;</p> <p>(ii) they do not know whether the other parent is dead or alive because they have not seen or heard from them in a long time;</p> <p>(iii) they believe or know that the other parent is dead but are unable to obtain the death certificate from home affairs [Home Affairs does not release death certificates to family members far removed from the deceased person, and also often refuses death certificate requests by the paternal side if the death is on the maternal side and visa versa].</p> <p>(iv) they believe or know that the other parent is dead but the death was not registered with home affairs or has been registered but not yet finalised.</p> <p>We propose that a prescribed affidavit be designed to guide SASSA officials and applicants through the process. This affidavit would need to be completed at the SASSA office and commissioned internally – ie not taken outside to SAPs to be commissioned externally.</p>	<p>6A (2) A primary caregiver contemplated in subregulation (1) who applies for an additional payment in respect of a child in their care must produce proof that -</p> <p>(a) the child is an orphan, in the form of -</p> <p>(i) certified copies of the death certificates of both the child's parents; or</p> <p>(ii) where the death certificate of one of the child's parents cannot be obtained by the applicant, then a certified copy of the death certificate of one parent, and a prescribed affidavit by the applicant attesting to the reasons why they cannot produce a death certificate for the other parent.</p> <p>(b) the primary caregiver is a relative of that orphan, by completing a prescribed affidavit; or</p> <p>(c) the primary caregiver is a supervising adult for that orphan, appointed ito s137(2) of the Children's Act, by completing the prescribed affidavit</p> <p><i>Note: See prescribed affidavit at the end of this submission.</i></p>

Matters in need of further discussion

(1) Case study that illustrates our concerns with regards to how Reg 6A(2) narrows the definition of orphan:

Lalitha was abandoned by her mother at birth. She is cared for by her paternal grandmother and her father. When she is 8 years old, her father dies and her granny applies for the CSG and the additional payment. The granny knows the name and ID number of Lalitha's mother and also her whereabouts – she lives in a nearby town. But she never visits or contacts the granny or Lalitha. She has effectively abandoned Lalitha.

Currently, Lalitha is eligible in terms of s150(1) (a) of the Children's Act to be placed in foster care with her Granny and to receive a Foster Care Grant of R1050. If s150(1) (a) is amended as proposed in the tabled Children's Amendment Bill; Lalitha's granny will no longer be able to obtain the FCG. She will also not be able to obtain the additional payment to the CSG [R460 + R230 = R690] because she will not be able to attest to Lalitha's mother being deceased or that she does not know whether Lalitha's mother is dead or alive. She will therefore only be eligible for the std CSG amount of R460. This amounts to retrogressive action for a group of vulnerable children.

This could be remedied by:

- (a) allowing relatives caring for children who have one deceased parent and one absent/abandoned parent – to also obtain the additional payment or
- (b) amending s150(1) (a) of the tabled Children's Amendment Bill so that only orphans in the care of relatives are no longer eligible for the FCG, while abandoned children in the care of relatives remain eligible for the FCG.

(2) The regulations do not say how SASSA will verify that the death certificate provided by the relative is that of the child's biological father

This verification will generally be easily done in respect of the child's mother, due to the name and ID of the mother usually being included on the child's birth certificate (abridged and unabridged).

However, father's details are not included on children's abridged birth certificates. All children born before 2014 will only have abridged birth certificates unless their relatives have applied for unabridged copies – which is unlikely because they are not entitled in law to apply for copies of birth certificates unless they are the child's biological parents. Relatives caring for orphaned children older than 7 years will therefore not be

able to prove that the death certificate they provide for the child's father, is in fact the child's father. As most orphans are teenagers, this is an obstacle that requires a solution.

One solution would be to ask Home Affairs to enable relatives to request copies of unabridged birth certificates from Home Affairs; or for SASSA to request the unabridged copies from Home Affairs once an application for an additional payment is lodged. However, this could delay the finalisation of the application by 12 months or more due to the waiting time for obtaining an unabridged copy. Obtaining an unabridged copy will in over 65% of the cases, not provide any evidence of the father because over 65% of children's birth registered with Home Affairs do not contain any details of the father. While this statistic is coming down with time, it is higher than 65% for older children who are the cohort most likely to be orphaned. Requesting an unabridged copy from Home Affairs and the 12 months delay this will cause is therefore not worth pursuing if it will not provide any information on the father in the vast majority of cases.

A prescribed affidavit would therefore need to be acceptable proof of who the child's parents are in most of the cases. This is also why we motivate for the affidavit to be 'prescribed' so that it captures the required information.

Case study to illustrate this point:

Lalitha was abandoned by her mother at birth. She is cared for by her paternal grandmother and her father. When she is 8 years old, her father dies and her granny applies for the CSG and the additional payment. Her granny has the following documents:

- *Lalitha's abridged birth certificate which contains the mother's name and ID number but no details of the father.*
- *The father's death certificate*

Granny cannot apply for the unabridged birth certificate because she is not a named biological parent of Lalitha. She also knows that even if she did obtain a copy, it would not help because her son's name is not on the birth register because he was not married to the mother and was not present when the mother went to Home Affairs to register the child.

How does SASSA verify that the death certificate provided by the Granny in this case is the death certificate of Lalitha's biological father?

Draft Regs	Commentary	Proposal
<p>6A(3) Whatever the case might be proof of death as contemplated in subregulation (2) must be accompanied by at least one certified copy of the death certificate in respect of one parent and an affidavit as contemplated in subregulation (2) (b) in respect of the second or another parent of the same child.</p>	<p>This sub-regulation re-iterates what sub-regulation 2 above already says. This is unusual in law but may be needed to prevent wrongful inclusion or exclusion. We advise a small amendment to make reference to the prescribed affidavit.</p>	<p>6A (3) Whatever the case might be, proof of death as contemplated in subregulation (2) must be accompanied by at least one certified copy of the death certificate in respect of one parent and a prescribed affidavit as contemplated in subregulation (2) (b) in respect of the other second or another parent of the same child.</p>

Draft Regs	Commentary	Proposal
<p>(4) The Agency must, after awarding an additional payment linked to a child support grant, refer the details of such a relative and the orphan, to the head of the Provincial Department of Social Development to enable such a Department to assess whether –</p> <ul style="list-style-type: none"> (a) the orphan or family is in need of prevention and early intervention programmes; or (b) the child is in need of care and protection. 	<p>Support</p>	
<p>(5) The payment referred to in regulation is subject to the concurrence of the Minister of Finance as contemplated in section 12A of the Act.</p>	<p>Support</p>	

Children living in child headed households

Draft Regs	Commentary	Proposal
<p>Reg 1</p> <p>‘Child-headed household’ means a ‘child-headed’ household as defined in section 1 of the Children’s Act</p>	<p>Support but flag queries that need resolution to ensure effective implementation</p> <p>Section 1 of the Children’s Act defines a child headed household (CHH) as ‘a household recognised as such in terms of section 137’.</p> <p>Section 137 provides that -</p> <p>(6) A provincial head of social development may recognise a household as a child headed household if –</p> <p>(a) the parent, guardian or caregiver of the household is terminally ill, has died or has abandoned the children in the household;</p> <p>(b) no adult family member is available to provide care for the children in the household;</p> <p>(c) a child over the age of 16 years has assumed the role of caregiver in respect of the children in the household; and</p> <p>(d) it is in the best interests of the children in the household.</p> <p>(2) A CHH must function under the general supervision of an adult designated by –</p> <p>(a) a children’s court; or</p> <p>(b) an organ of state or an NGO determined by the provincial head of social development.</p> <p>(5) (a) The child heading the household or the adult contemplated in subsection (2) may collect and administer for the CHH any social security grant or other grant in terms of the Social Assistance Act, 2004.</p>	<p>Queries for discussion with DSD:</p> <ul style="list-style-type: none"> • How many CHHs have been recognised by provincial DSDs ito s137? • How does a child who heads a CHH prove to SASSA that he or she has been recognised ito s137 of the Children’s Act? • How does a supervising adult prove to SASSA that he or she has been designated by an organ of state or a NGO ito s137(2) (b) of the Children’s Act? • Will a child heading a household or a supervising adult be eligible to apply for the additional payments (top-ups) if the children in the CHH are orphans? If yes, they should be specified as eligible. See our recommendation to this effect below in Reg 9(6) and 6A(2).

Draft Regs	Commentary	Proposal
<p>Reg 6 (9)</p> <p>A child who heads a child-headed household is, subject to regulation 6(1) (a) to (f) eligible for a child support grant in respect of himself or herself.</p>	<p>Support and recommend addition</p> <p>This amendment is aimed at enabling a child who is 16 or 17 years old, who is looking after his or her siblings, to obtain a CSG for him or herself, (in addition to obtaining CSGs for his siblings).</p> <p>It is restricted to a 16 or 17- year- olds due to the definition of CHH in s137 of the Children’s Act [see row above] and the definition of primary caregiver in the Social Assistance Act¹.</p> <p>It is very rare that a 16 or 17- year-old is successful in applying to SASSA as the primary caregiver of his or her siblings. None of the professionals or practitioners we work with are aware of this happening. We would recommend DSD ask SASSA for data from SOCPEN as to whether they have any 16 or 17 year old primary caregivers receiving CSGs for children older than 5 years.</p> <p>In the rare instance that a child heading a CHH may apply to SASSA, the amendment proposed to Reg 6(9) is necessary as it will ensure the child heading the household also gets a CSG for his or her own basic needs. We therefore support this amendment.</p> <p>What is more common in practice is that a ‘supervising adult’ is appointed ito s137(2) of the Children’s Act and that adult then applies for CSGs for all the children in the CHH, including the child heading the household.</p>	<p>Insert underlined text</p> <p>Reg 6 (9)</p> <p><u>(a) A child who heads a child-headed household is, subject to regulation 6(1) (a) to (f) eligible for a child support grant in respect of himself or herself.</u></p> <p><u>(b) If the child in (a) above is an orphan, he or she is subject to regulation 6A, also eligible for an additional payment in respect of himself or herself.</u></p> <p>Reg 6 (10)</p> <p><u>(a) A supervising adult of a child headed household, appointed ito s137(2) of the Children’s Act, is subject to regulation 6(1) (a) to (f) eligible for a child support grant in respect of the children he or she has been appointed to supervise.</u></p> <p><u>(b) A supervising adult of a child headed household, appointed ito s137(2) of the Children’s Act, is subject to regulation 6A (1) to (2), eligible for an additional</u></p>

¹ S1 of the Social Assistance Act: “**primary care giver**” means a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily care needs of that child

	<p>We note that there is no reference in Reg 6(9) or Reg 6A to the head of a CHH qualifying for the additional payment in the event that he or she is an orphan or the supervising adult of the CHH in the event that the children in the CHH are orphans.</p> <p>The regulations should provide for these options because s137 (9) of the Children’s Act prohibits the exclusion of children in CHHs from any benefit that they would have been entitled to had they not been a child in a child headed household.</p> <p>We therefore recommend an amendment to Reg 9(6) and the addition of a Reg 9(7) to cater for this.</p>	<p><u>payment in respect of the children he or she has been appointed to supervise, if the children concerned are orphans.</u></p> <p><i>Note: Sub-regulations (6)(9) (b) and 6(10) (b) above may be better placed in Reg 6A.</i></p>
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Conclusion

Please also review our prescribed affidavit.

Please note in addition that we:

- support the amendments to regulation 11(3) (b).
- oppose the addition of paragraph (d) to Regulation 8. Sub-regulations (2) and (3) provide adequate cover for reviewing a CDG if a child’s disability or health condition has improved. We are opposed to the increasing tendency of introducing mechanisms to make grants temporary so that they lapse after a time period and then put an onus on the beneficiary to re-apply and prove that they still have a disability. If SASSA wants to review the grant with a view to lapsing the grant, they should follow the prescribed procedures for review which include giving notice and re-assessing the applicant/child before making a decision to lapse the grant.

Thank-you for considering our comments and we look forward to further engagements on these regulations.

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