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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 351**

**SOCIAL SECURITY**

**The Scottish Child Payment Regulations 2020**

*Made* - - - - *3rd November 2020*

*Coming into force* - - *9th November 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 79 and 95 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 these Regulations 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 informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

**PART 1**

**Introduction**

**Citation**

1. These Regulations may be cited as the Scottish Child Payment Regulations 2020.

**Commencement**

2. These Regulations come into force on the first Monday after the day on which they are made.

**Overview**

- 3.—(1) Part 2 makes provision about the interpretation of these Regulations.

(2) Part 3 makes provision about eligibility and the assistance that is to be given to eligible individuals in connection with having responsibility for a child (referred to in these Regulations as a “Scottish child payment”).

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(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.

(3) Part 4 makes transitory provision.

(4) The schedule makes provision about matters of procedure for applying for, and determining entitlement to, a Scottish child payment.

## PART 2

### Interpretation

#### *General*

#### **References to the 2018 Act**

4. In these Regulations “the 2018 Act” means the Social Security (Scotland) Act 2018<sup>(2)</sup>.

#### *Expressions about time and timing*

#### **When an application is to be treated as made**

5. A reference to the day on which an application is made means the day on which an application is received by the Scottish Ministers or, as the context may require, the day on which the application is treated as having been made by virtue of regulation 25 or the schedule.

#### **Meaning of “working day”**

6. A “working day” means a day other than—

- (a) a Saturday,
- (b) a Sunday, or
- (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(3)</sup>.

#### **Calculation of the age of a child born on 29 February**

7. When calculating the age of a child born on 29 February for the purposes of these Regulations, in a non-leap year the birthday of the child is to be taken to be 28 February.

#### **Meaning of “week”**

8. A “week” means a period of 7 days.

#### *Expressions about inter-personal relationships*

#### **Meaning of being responsible for a child**

9. An individual is to be regarded as responsible for a child on a day only if at least one or more of the following statements is true—

- (a) the child is a dependant of the individual on that day,

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(2) 2018 asp 9.

(3) 1971 c.80. Schedule 1, paragraph 2 sets out the Scottish bank holidays, it is amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

- (b) the child is a dependant of the individual's partner on that day.

### **Meaning of “partner”**

**10.** A person (“A”) is the partner of another person (“B”) on a day only if, on that day, A and B would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012<sup>(4)</sup> (see section 39 of that Act<sup>(5)</sup>).

### **Meaning of “kinship carer”**

**11.** A person is a kinship carer for a child on a day if—

- (a) the person is a qualifying person in relation to the child within the meaning of section 72(2) of the Children and Young People (Scotland) Act 2014<sup>(6)</sup>, and
- (b) on that day, the child lives with the person (exclusively or predominantly) under the terms of—
  - (i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014, or
  - (ii) an agreement between the person, the person's partner or both of them and—
    - (aa) a local authority by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995<sup>(7)</sup>,
    - (bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989<sup>(8)</sup>, or
    - (cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25 of the Children (Northern Ireland) Order 1995<sup>(9)</sup>.

### **Meaning of “dependant”**

**12.—(1)** A child is to be regarded as a dependant of a person on a day only if—

- (a) paragraph (2) applies, or
  - (b) on that day the person is a kinship carer for the child.
- (2)** This paragraph applies if—
- (a) the person has been awarded—
    - (i) child tax credit, child benefit or state pension credit for the day in question (or for a period that includes that day), or
    - (ii) universal credit for an assessment period that includes the day in question, and
  - (b) the child is recognised to be a child for whom the person has responsibility in terms of that award of assistance.

**(3)** It is immaterial for the purpose of this regulation that the award of assistance to that person referred to in paragraph (2) does not include any amount in respect of the child due to a rule that restricts the number of dependants in respect of whom the person can be given that type of assistance.

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<sup>(4)</sup> 2012 c.5.

<sup>(5)</sup> Section 39 is amended by S.I. 2014/3229 and S.I. 2019/1458.

<sup>(6)</sup> 2014 asp 8.

<sup>(7)</sup> 1995 c.36. Section 17(6) is amended by the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2, paragraph 9(4), the Children's Hearings (Scotland) Act 2011 (asp 1), schedule 5, paragraph 2(4) and S.S.I. 2013/211.

<sup>(8)</sup> 1989 c.41. Section 105(4) is substituted by S.I. 2016/413.

<sup>(9)</sup> S.I. 1995/755 (N.I. 2). Article 25 is amended by the Children (Leaving Care) Act (Northern Ireland) 2002 (c.11), section 2(1).

*Expressions about social security assistance***Meaning of determination of entitlement to a Scottish child payment**

**13.**—(1) Unless the context otherwise requires, references in these Regulations to a determination of an individual’s entitlement to a Scottish child payment are to a determination made—

- (a) by the Scottish Ministers—
  - (i) under paragraph 3 of the schedule, or
  - (ii) (following a request for a re-determination) under paragraph 16 of the schedule,
- (b) by the First-Tier Tribunal for Scotland—
  - (i) under paragraph 22 of the schedule in an appeal against a determination made by the Scottish Ministers, or
  - (ii) (subsequent to such an appeal) under its Tribunals Act powers,
- (c) by the Upper Tribunal for Scotland under its Tribunals Act powers (subsequent to an appeal against, or following a review of, a decision of the First-tier Tribunal).

(2) In this regulation, “Tribunals Act powers” means powers under Part 6 (review or appeal of decisions) of the Tribunals (Scotland) Act 2014<sup>(10)</sup>.

(3) A determination of an individual’s entitlement to a Scottish child payment consists of—

- (a) a decision about whether or not the eligibility rules specified in regulation 18 are satisfied in the individual’s case,
- (b) if those rules are satisfied, a decision (taken in accordance with these Regulations) about what assistance the individual is entitled to be given, and
- (c) if the determination is to be made on the basis that the individual has ongoing entitlement to a Scottish child payment, a decision about what assistance the determination is to entitle the individual to be given in the future.

**Meaning of references to specified kinds of assistance**

**14.** For the purposes of these Regulations, references to a kind of assistance specified in this regulation are to—

- (a) child tax credit under the Tax Credits Act 2002<sup>(11)</sup>,
- (b) income-based jobseeker’s allowance under the Jobseekers Act 1995<sup>(12)</sup>,
- (c) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007<sup>(13)</sup>,
- (d) income support under Part VII of the Social Security Contributions and Benefits Act 1992<sup>(14)</sup>,
- (e) state pension credit under the State Pension Credit Act 2002<sup>(15)</sup>,
- (f) universal credit under Part 1 of the Welfare Reform Act 2012<sup>(16)</sup>,
- (g) working tax credit under the Tax Credits Act 2002<sup>(17)</sup>.

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<sup>(10)</sup> 2014 asp 10.

<sup>(11)</sup> 2002 c.21.

<sup>(12)</sup> 1995 c.18.

<sup>(13)</sup> 2007 c.5.

<sup>(14)</sup> 1992 c.4.

<sup>(15)</sup> 2002 c.16.

<sup>(16)</sup> 2012 c.5.

<sup>(17)</sup> 2002 c.21.

### **Meaning of references to assistance being awarded**

**15.**—(1) An individual is not to be regarded as having been awarded a kind of assistance specified in regulation 14 for a day or a period if the award was made in error (whether or not induced by the individual).

(2) For the avoidance of doubt, an individual is to be regarded as having been awarded assistance for a day or period even if the sum awarded is reduced to £0 as a result of a sanction.

### **Meaning of “assessment period” in relation to universal credit**

**16.** “Assessment period” means a period in respect of which universal credit may be payable to the individual in question in accordance with section 7 of the Welfare Reform Act 2012.

## **PART 3**

### **Eligibility and assistance to be given**

#### **Duty to give assistance**

**17.** The Scottish Ministers must give an individual whatever assistance the individual is entitled to be given under a determination of the individual’s entitlement to a Scottish child payment.

#### **Eligibility for a Scottish child payment**

**18.** An individual is eligible for a Scottish child payment in respect of a child if—

- (a) the individual has made an application for the payment (or an application is treated as having been made by the individual by virtue of a provision in the schedule requiring the Scottish Ministers to make a determination without application in the individual’s case),
- (b) the child is under 6 years of age on the day the application is made,
- (c) no other individual has received, or is due to receive, a Scottish child payment in respect of the child and the period that the payment will cover (other than in circumstances where paragraph 10(1)(b) of the schedule applies),
- (d) the individual is ordinarily resident in Scotland on the day the application is made,
- (e) the individual is responsible for the child on the day the application is made, and
- (f) the individual has been awarded, for the day the application is made (or for a period or universal credit assessment period which includes that day), assistance of a kind specified in regulation 14.

#### **Ongoing entitlement**

**19.**—(1) A determination of an individual’s entitlement to a Scottish child payment in respect of a child and a week may be made on the basis that the individual has an ongoing entitlement to a Scottish child payment.

(2) A determination of ongoing entitlement is made on the basis that the individual will continue to be entitled to a Scottish child payment in respect of that child in each subsequent week until—

- (a) the week following any week in which the individual ceases to have responsibility for the child,
- (b) the week following that in which the child attains the age of 6 years,

- (c) the week following any week in which the individual ceases to be ordinarily resident in Scotland,
- (d) any week in which no award of assistance of a kind specified in regulation 14 is made to the individual for any day in that week.

### **Value and form of a Scottish child payment**

**20.**—(1) The value of a Scottish child payment in respect of a child is £10 per week.

(2) A Scottish child payment may only be given as money, except as provided for by paragraph (3).

(3) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), or under paragraph 29 of the schedule of these Regulations, the individual's Scottish child payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual's agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(4) For the purpose of sub-paragraph (3), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

### **Time of payment**

**21.**—(1) Following a determination that an individual is entitled to a Scottish child payment, the payment is to be given in accordance with paragraph (2).

(2) Payments are to be made in respect of periods of 4 weeks, in arrears, so that—

- (a) the first payment is made in the last week of the period of 4 weeks beginning with the day on which the application is made (the individual's first payment period), and
- (b) subsequent payments are made in the last week of each successive period of 4 weeks in which the individual continues to be entitled to a Scottish child payment for at least one week by virtue of regulation 19.

### **Individual's right to stop receiving assistance**

**22.**—(1) An individual may request that the Scottish Ministers cancel a determination of the individual's entitlement to assistance.

(2) On being requested to do so under paragraph (1), the Scottish Ministers must cancel a determination—

- (a) with immediate effect, or
- (b) with effect from a later date specified in the request.

(3) An individual is not entitled, and is not to become entitled, to be given assistance by a determination after it has been cancelled.

(4) A request under paragraph (1) must be made in such form as the Scottish Ministers require.

(5) The Scottish Ministers must publicise any requirements for the time being set under paragraph (4).

### **Later determination supersedes earlier**

23.—(1) The latest determination of an individual’s entitlement to a Scottish child payment in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual’s entitlement to a Scottish child payment in respect of the same period or event.

(2) Accordingly the individual is not entitled, and is not to become entitled, to be given a Scottish child payment in respect of that period or event by the earlier determination insofar as it has been superseded.

## **PART 4**

### **Transitory provision**

#### **Definitions – initial period**

24.—(1) Regulations 25, 26, and 27 apply in respect of the initial application period and the initial payment period.

(2) For the purposes of this Part—

- (a) the “initial application period” means the period beginning with the day on which these Regulations come into force and ending on the day which falls 14 weeks after that day, and
- (b) the “initial payment period” means the period beginning with the day immediately after the end of the initial application period and ending on the day which falls 4 weeks after that day.

#### **When an application is treated as made – initial period**

25. Any application for a Scottish child payment which is received by the Scottish Ministers during the initial application period is to be treated for the purposes of these Regulations as having been made on the day immediately after the expiry of that period.

#### **Time of payment – initial period**

26. Where an individual’s first payment period (see regulation 21(2)(a)) would fall wholly or partly in the initial payment period, regulation 21(2) does not apply and instead—

- (a) the first payment to the individual is to be made in arrears on such date within the initial payment period as the Scottish Ministers consider appropriate,
- (b) subsequent payments to the individual are to be made in the last week of each successive period of 4 weeks in which the individual continues to be entitled to a Scottish child payment for at least one week by virtue of regulation 19.

#### **Duty to notify – initial period**

27.—(1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom sub-paragraph (3) or (4) applies.

(2) The Scottish Ministers place a duty under paragraph (1) by informing the person—

- (a) of the changes in circumstances which the person has a duty to notify them about,
- (b) of the way in which the person is to notify them, and
- (c) that failing to notify them about a change in any of those circumstances in that way, so that an individual’s entitlement to a Scottish child payment is determined on the basis of information that is false or misleading, may be an offence under section 72 of the 2018 Act.

(3) This sub-paragraph applies to an individual in respect of whom an application for a Scottish child payment is made during the initial application period.

(4) This sub-paragraph applies to a person acting on behalf of an individual to whom sub-paragraph (3) applies in relation to any application for a Scottish child payment during the initial period.

St Andrew's House,  
Edinburgh  
3rd November 2020

*SHIRLEY-ANNE SOMERVILLE*  
A member of the Scottish Government



## SCHEDULE

Regulation 3(4)

### Procedural matters

## PART 1

### Applications and determination of applications

#### **Requirement for applications**

1.—(1) Except as provided for by Part 2 of this schedule, an individual is not entitled to a Scottish child payment unless an application is made to the Scottish Ministers.

(2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the applicant—

- (a) would not be eligible for the Scottish child payment applied for if the application were treated as made on the day they received it, and
- (b) would be eligible for the Scottish child payment applied for if the application were treated as made on a day falling within the period of 14 days beginning with the day they received it,

the Scottish Ministers may choose the day within that 14 day period on which the application is to be treated as made.

(3) For the avoidance of doubt, an application for assistance must be—

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

as the Scottish Ministers require.

(4) If the Scottish Ministers reject something purporting to be an application for a Scottish child payment, they must inform the individual concerned of—

- (a) the decision to do that,
- (b) the reasons for it, and
- (c) the individual's right to appeal under paragraph 23(1).

#### **Withdrawal of application**

2.—(1) An individual who has made an application for a Scottish child payment may request that the Scottish Ministers disregard it.

(2) If an individual requests that an application be disregarded—

- (a) the Scottish Ministers are not to make a determination of the individual's entitlement to a Scottish child payment on the basis of the application, and
- (b) accordingly, their duty to do so under paragraph 3 ceases to apply.

(3) A request under sub-paragraph (1) must be made in such form as the Scottish Ministers require.

(4) The Scottish Ministers must publicise any requirements for the time being set under sub-paragraph (3).

### **Duty to make a determination of entitlement**

3. The Scottish Ministers must make a determination of an individual's entitlement to a Scottish child payment—

- (a) on receiving an application for a Scottish child payment from the individual, or
- (b) when required to do so by Part 2 of this schedule.

### **Notice of determination**

4.—(1) Having made a determination under paragraph 3 of an individual's entitlement to a Scottish child payment, the Scottish Ministers must inform the individual—

- (a) of the determination,
- (b) of the reasons for it,
- (c) of the individual's right under paragraph 14 to request that the Scottish Ministers re-determine the individual's entitlement to the payment, and
- (d) that the individual will have the right under paragraph 19 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination in the period allowed for re-determination.

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

### **Multiple determinations involving the same child**

5.—(1) Where the Scottish Ministers are required by paragraph 3 to make a determination of the entitlement of two or more individuals for a Scottish child payment in respect of the same child and the same period, the determination must be made in accordance with sub-paragraphs (2) to (4).

(2) For the avoidance of doubt, the Scottish Ministers must—

- (a) make a determination of each individual's entitlement, notwithstanding that another individual may have previously been properly awarded a Scottish child payment in respect of the child (and continue to receive that payment), and
- (b) in so doing, determine which (if any) of the individuals is to be entitled to a Scottish child payment in respect of the child.

(3) Where the Scottish Ministers decide that two or more individuals are eligible for a Scottish child payment in respect of the child and the period (see regulations 18 and 19), they must apply the rules in sub-paragraph (4) to determine which of the individuals is to be entitled to the payment.

(4) The rules are that—

- (a) where only one individual has been awarded child tax credit, state pension credit or universal credit for the day, or assessment period that includes the day, in question (and the child is recognised to be a child for whom the individual has responsibility in terms of that award of assistance), that individual is entitled to the payment,
- (b) where none of the individuals have been awarded assistance as described in sub-paragraph (4)(a), and only one individual has been awarded child benefit for the day in question (and the child is recognised to be a child for whom the individual has responsibility in terms of that award of assistance), that individual is entitled to the payment,
- (c) where the individuals are kinship carers for the child, and none of them have been awarded any kind of assistance as described in sub-paragraph (4)(a) or (4)(b), the individual whose determination is to be made first is entitled to the payment,

- (d) where one individual has been awarded child benefit for the day in question, and another individual is a kinship carer for the child, the individual who is the kinship carer for the child is entitled to the payment.

(5) For the purposes of sub-paragraph (4), the Scottish Ministers must determine the entitlement of the individual whose entitlement first fell to be determined in accordance with paragraph 3 (whether on receipt of an application from the individual or by virtue of Part 2 of this schedule) before making any other determination.

## PART 2

### Determination without application

#### **Determination following official error resulting in underpayment**

6.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application) where—

- (a) they have previously made a determination of the individual’s entitlement to the payment (“the original determination”),
- (b) they establish that due to an official error the original determination was incorrect resulting in the individual—
  - (i) not being given a Scottish child payment to which the individual was entitled, or
  - (ii) being given a lower award than that to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to the Scottish child payment, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers’ determination of the individual’s entitlement to the Scottish child payment.

(2) In making a determination required by sub-paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

(3) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.

(4) In this paragraph, “official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone not so acting.

#### **Determination following error resulting in overpayment**

7.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application) where—

- (a) they have previously made a determination of the individual’s entitlement to the payment (“the original determination”),
- (b) they establish that due to an error the original determination was incorrect resulting in the individual—
  - (i) being given a Scottish child payment to which they were not entitled, or
  - (ii) being given a higher award than that to which they were entitled,

*Status: This is the original version (as it was originally made).*

- (c) the Scottish Ministers are not considering a request for a re-determination of the individual's entitlement to the Scottish child payment, and
  - (d) the individual has not made an appeal (to the First-tier Tribunal for Scotland or Upper Tribunal) against the Scottish Ministers' determination of the individual's entitlement to the Scottish child payment, that has not yet been determined.
- (2) In making a determination required by sub-paragraph (1) the Scottish Ministers are to use—
- (a) the information provided in the application that led to the original determination,
  - (b) any other information they have obtained in connection with that application, and
  - (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to a Scottish child payment.
- (3) Where a determination is to be, or has been, made without an application by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.
- (4) In this paragraph, references to an "error" are to—
- (a) an error in the performance of a function conferred by virtue of these Regulations, including a decision under regulation 13 being made—
    - (i) wrongly, or
    - (ii) correctly but on the basis of—
      - (aa) incorrect information, or
      - (bb) an assumption which proves to be wrong,
  - (b) a new decision under regulation 13 not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

#### **Determination following backdated award of assistance**

- 8.—**(1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment (without receiving an application) where the circumstances in sub-paragraphs (2) to (5) apply.
- (2) A determination has previously been made that the individual is not entitled to the payment in connection with the child ("the original determination").
- (3) The Scottish Ministers establish that a backdated award of assistance of a kind specified in—
- (a) regulation 12(2)(a) is made in circumstances in which regulation 12(2)(b) applies, or
  - (b) regulation 14 is made.
- (4) The award referred to in sub-paragraph (3) ("the backdated award") is backdated to a day, or a period that begins on a day, that falls no later than the day on which the original determination was made.
- (5) Had the backdated award been made before the original determination, a determination that the individual is entitled to a Scottish child payment would have been made instead.
- (6) For the purposes of this paragraph, an award is backdated if it relates to a day, or a period that begins on a day, that falls before the day the decision to make the award was taken.
- 9.—**(1) In making a determination required by paragraph 8 the Scottish Ministers are to use—
- (a) the information provided in the application that led to the original determination, and
  - (b) any other information they have obtained in connection with that application.

(2) Where a determination is to be, or has been, made without an application by virtue of paragraph 8, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.

#### **Determination following change of circumstances etc.**

**10.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a Scottish child payment in respect of a child (without receiving an application) where an individual has ongoing entitlement to a Scottish child payment (see regulation 19) and they—

- (a) consider that a change in circumstances is likely to mean that an individual is no longer entitled to such a payment,
- (b) wish to make an award of a Scottish child payment in relation to that child to a different individual following a determination that that other individual is to be entitled to the payment in respect of the child (see paragraph 5).

(2) Where—

- (a) sub-paragraph (1)(a) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the change in circumstances occurred or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances,
- (b) sub-paragraph (1)(b) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the Scottish Ministers determine the entitlement of the other person referred to in that sub-paragraph.

(3) In sub-paragraph (1)(a), “a change in circumstances” means a change in the circumstances of the individual in relation to any of the matters listed in regulation 18.

#### **Determination following award of a Scottish child payment in respect of another child**

**11.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to a Scottish child payment in respect of a child (without receiving an application) where—

- (a) the individual has been properly awarded a Scottish child payment in respect of another child and has an ongoing entitlement to that payment (see regulation 19),
- (b) the individual notifies the Scottish Ministers that the individual has responsibility for the child (see regulation 9), and
- (c) it appears to the Scottish Ministers that, unless there is a change in circumstances, the individual is likely to be entitled to a Scottish child payment in respect of the child.

(2) In making a determination required by sub-paragraph (1), the Scottish Ministers may use such of the information they have obtained in connection with the award referred to in sub-paragraph (1) (a) as appears to them to be relevant.

(3) Where a determination is to be made by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to—

- (a) the day on which notification is given under sub-paragraph (1)(b), or
- (b) such earlier day not more than 4 weeks before that day on which the child was recognised to be a child for whom the individual has responsibility in terms of an award of assistance mentioned in regulation 12(2)(a).

### **Determination following cessation of award of a Scottish child payment**

**12.**—(1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment in respect of a child (without receiving an application) where the circumstances in sub-paragraphs (2) to (5) apply.

(2) The individual has previously been properly awarded a Scottish child payment in respect of a child.

(3) A determination has subsequently been made that the individual is no longer entitled to the Scottish child payment in respect of that child due to a change of circumstances relating to the matters listed in—

- (a) regulation 18(e) (where the individual ceased to have responsibility for the child), or
- (b) regulation 18(f) (where no award of assistance of a kind specified in regulation 14 was made to the individual for any day in a relevant week).

(4) It appears to the Scottish Ministers that, due to a change in the individual's circumstances in relation to the matters referred to in sub-paragraph (3), the individual is likely to once again be entitled to a Scottish child payment in respect of the child.

(5) Not more than 12 weeks have passed since the determination referred to in sub-paragraph (3).

(6) Where a determination is to be made by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to the day on which the change in circumstances occurred or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances.

### **Determination to effect a deduction decision**

**13.**—(1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment (without receiving an application) where the circumstances in sub-paragraphs (2) and (3) apply.

(2) This sub-paragraph applies where—

- (a) regulation 20 allows a Scottish child payment to be given to the individual by way of deduction, or
- (b) a Scottish child payment is being given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

(3) This sub-paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Scottish child payment to be given by way of deduction (including introducing a deduction, where the full amount of Scottish child payment was previously given as money),
- (b) vary any period for which the individual's Scottish child payment is to be given by way of deduction that may have been specified in a previous determination of the individual's entitlement, or
- (c) cease making deductions, and instead give the individual's Scottish child payment in the form of money.

(4) The Scottish Ministers are to make a determination (without receiving an application) where an individual who is receiving a Scottish child payment by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Scottish child payment being given by way of deduction,
- (b) wishes the Scottish Ministers to increase the amount of their Scottish child payment that is given by way of deduction,

(c) wishes the Scottish Ministers to decrease the amount of their Scottish child payment that is given by way of deduction (including ceasing the deduction), or

(d) wishes the Scottish Ministers to amend the length of any period referred to in sub-paragraph (3)(b).

(5) Where a determination is made in pursuance of sub-paragraph (1) or (4), references in these Regulations to the day on which the application is made are to be read as references to the day on which the determination is made.

## PART 3

### Re-determination of entitlement

#### **Right to request re-determination and periods allowed**

**14.**—(1) An individual may request that the Scottish Ministers re-determine the individual's entitlement to a Scottish child payment, after being informed (in accordance with paragraph 4(1)) of a determination by the Ministers of the individual's entitlement to such a payment.

(2) Unless sub-paragraph (3) applies, a request for re-determination is valid only if it is made before the end of the period of 31 days beginning with the day that the individual is informed (in accordance with paragraph 4(1)) of the right to make the request.

(3) A request for re-determination is valid if it is made after that period has ended, but before the end of the day that falls one year after the day on which the individual is informed (in accordance with paragraph 4(1)) of the determination, if the individual has a good reason for not requesting a re-determination sooner (see paragraph 15).

(4) A request for re-determination is valid only if it is made in such form as the Scottish Ministers require.

(5) If the Scottish Ministers decide that something purporting to be a request for a re-determination does not satisfy the condition in sub-paragraph (4), they must inform the individual concerned of—

- (a) the decision,
- (b) the reasons for it, and
- (c) the individual's right to appeal under paragraph 23.

#### **Late request for re-determination**

**15.**—(1) It is for the Scottish Ministers, or on appeal under paragraph 23 the First-tier Tribunal for Scotland, to decide whether, for the purpose of paragraph 14(3), an individual has a good reason for not requesting a re-determination sooner.

(2) Where the Scottish Ministers have made a decision under sub-paragraph (1), they must inform the individual concerned—

- (a) of the decision, and
- (b) if the decision is that the individual has no good reason for not requesting a re-determination sooner, of—
  - (i) the reasons for the decision, and
  - (ii) the individual's right to appeal under paragraph 23.

**Duty to re-determine and period allowed**

16.—(1) On receiving a valid request under paragraph 14 to re-determine an individual's entitlement to a Scottish child payment, the Scottish Ministers are to make a determination of the individual's entitlement to that payment.

(2) The Scottish Ministers must aim to make that determination within the period of 16 working days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers, or
  - (b) in the case of a request for a re-determination to which paragraph 14(3) applies (late requests), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual has a good reason for not requesting a re-determination sooner.
- (3) If the Scottish Ministers fail to make the determination within that period—
- (a) their duty to make the determination ends (but they may still make it), and
  - (b) paragraph 18 applies.

**Notice of re-determination**

17.—(1) Having made a determination under paragraph 16(1) of an individual's entitlement to a Scottish child payment, the Scottish Ministers must—

- (a) inform the individual—
  - (i) of the determination,
  - (ii) of the reasons for it,
  - (iii) of the individual's right under paragraph 19 to appeal to the First-tier Tribunal against the determination, and
- (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

**Notice where re-determination not made timeously**

18.—(1) Where the Scottish Ministers fail to make a determination under paragraph 16 within the period allowed by paragraph 16(2), the Scottish Ministers must—

- (a) inform the individual—
  - (i) that the individual's request for a re-determination has not been dealt with within the period allowed, and
  - (ii) that the individual therefore has the right to appeal to the First-tier Tribunal against the determination under paragraph 3 which prompted the request for a re-determination, and
- (b) provide the individual with a form that the individual can complete and submit to the Scottish Ministers in order to bring an appeal against the determination.

(2) The Scottish Ministers must fulfil their duty under sub-paragraph (1)(a) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.



## PART 4

### Appeals

#### **Right to appeal to the First-tier Tribunal against determination**

- 19.**—(1) An individual may appeal to the First-tier Tribunal for Scotland—
- (a) against a determination under paragraph 16 of the individual’s entitlement to a Scottish child payment, or
  - (b) in a case where sub-paragraph (2) applies, against the determination under paragraph 3 referred to in that sub-paragraph.
- (2) This sub-paragraph applies where—
- (a) having been informed of a determination under paragraph 3 of the individual’s entitlement to a Scottish child payment, the individual has made a request for a re-determination under paragraph 14, and
  - (b) the Scottish Ministers have failed to make a determination under paragraph 16 in consequence of that request within the period of 16 working days described in paragraph 16(2).

#### **Initiating an appeal**

- 20.**—(1) To bring an appeal against a determination, an individual must submit to the Scottish Ministers the form provided under paragraph 17(1)(b) or (as the case may be) paragraph 18(1)(b) in relation to the determination.
- (2) On receiving a form submitted under sub-paragraph (1), the Scottish Ministers must send—
- (a) the form, and
  - (b) the information held by them that they used to make the determination in question,
- to the First-tier Tribunal.
- (3) Having complied with sub-paragraph (2), the Scottish Ministers must inform the individual to whom the determination in question relates that they have done so.
- (4) In this paragraph, references to a form include a copy of a form.
- (5) For the avoidance of doubt, the form that the Scottish Ministers provide under paragraph 17 and 18 need not be a physical form.

#### **Deadline for appealing**

- 21.**—(1) An appeal under paragraph 19—
- (a) may be brought without the First-tier Tribunal’s permission if an appeal application is made within the period of 31 days beginning with the day the relevant event occurred,
  - (b) may be brought only with the First-tier Tribunal’s permission if an appeal application is made after the period mentioned in sub-paragraph (1)(a),
  - (c) may not be brought if an appeal application has not been made within the period of one year beginning with the day the relevant event occurred.
- (2) In sub-paragraph (1)—
- (a) “the relevant event” means—

*Status: This is the original version (as it was originally made).*

- (i) in the case of an appeal against a determination under paragraph 16(1), the individual to whom the determination relates being informed of it in accordance with paragraph 17(1),
- (ii) in the case of an appeal against a determination under paragraph 3 the individual to whom the determination relates being informed (in accordance with paragraph 18(1)) that the individual has the right to appeal against it,
- (b) an appeal application is made when a form, that relates to the determination in question and has been completed to the extent that Scottish Tribunal Rules(18) require, is received by the Scottish Ministers having been submitted in accordance with paragraph 20(1).
- (3) The First-tier Tribunal may give permission under sub-paragraph (1)(b) for an appeal to be brought only if it is satisfied that there is a good reason for the application not having been made sooner.

### **First-tier Tribunal’s power to determine entitlement**

**22.** In an appeal under paragraph 19 against a determination of an individual’s entitlement to a Scottish child payment, the First-tier Tribunal may—

- (a) uphold the determination, or
- (b) make its own determination of the individual’s entitlement to a Scottish child payment.

### **Appeal to First-tier Tribunal against process decisions**

**23.—**(1) An individual may appeal to the First-tier Tribunal for Scotland against a decision by the Scottish Ministers—

- (a) to reject something purporting to be an application for assistance (see paragraph 1)),
- (b) that something purporting to be a request for a re-determination does not satisfy the condition in paragraph 14(4),
- (c) that an individual has no good reason for not requesting a re-determination sooner (see paragraph 15).

(2) An appeal under this paragraph—

- (a) may be brought without the First-tier Tribunal’s permission within the period of 31 days beginning with the day the individual was informed of the decision in accordance with these Regulations,
- (b) may be brought only with the First-tier Tribunal’s permission after the period mentioned in sub-paragraph (2)(a),
- (c) may not be brought after the end of the period of one year beginning with the day the individual was informed of the decision in accordance with these Regulations.

(3) The First-tier Tribunal may give permission under sub-paragraph (2)(b) for an appeal to be made only if it is satisfied that there is a good reason for the appeal not having been made sooner.

(4) A decision by the First-tier Tribunal about—

- (a) the outcome of an appeal under this paragraph, or
- (b) whether to give permission under sub-paragraph (2)(b) for an appeal to be brought,

is final.

(5) Accordingly (and without prejudice to the generality of sub-paragraph (4)), any such decision by the First-tier Tribunal may be neither—

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(18) Section 68(2) of the Tribunals (Scotland) Act 2014 asp 10.

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014<sup>(19)</sup>, nor
- (b) appealed against under section 46 of that Act.

### **Presumption for purposes of paragraphs 4, 14, 15, 17, 18 and 20**

**24.**—(1) Sub-paragraph (2) applies in relation to the references in paragraphs 4, 14, 15, 17, 18, and 20 to an individual being informed of something by the Scottish Ministers in accordance with these Regulations.

(2) Where, in order to fulfil their duty to inform an individual of something, the Scottish Ministers send information—

- (a) through the postal service to the last known address the Scottish Ministers have for the individual, or
- (b) by email to the email address most recently provided to the Scottish Ministers by the individual for the purposes of these Regulations,

the individual is to be taken to have received the information 48 hours after it is sent by the Scottish Ministers unless the contrary is shown.

## **PART 5**

### **Further provision about determining entitlement**

#### **Obtaining information to make determination**

**25.**—(1) Where the Scottish Ministers are determining an individual's entitlement to a Scottish child payment, and require further information in order to satisfy themselves about any matter material to the making of the determination, they may request that the individual provide them with the information within such period as they specify.

(2) If the individual fails to provide information requested under sub-paragraph (1) within the specified period the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the individual does not satisfy the eligibility rules in regulation 18, or (as the case may be) that the individual has no continuing entitlement under regulation 19.

#### **Duty to notify change of circumstances**

**26.**—(1) The Scottish Ministers may place a duty to notify them about a change in circumstances on a person to whom sub-paragraph (3) or (4) applies.

(2) The Scottish Ministers place a duty under sub-paragraph (1) on a person by informing the person—

- (a) of the changes in circumstances which the person has a duty to notify them about,
- (b) of the way in which the person is to notify them, and
- (c) that failing to notify them about a change in any of those circumstances in that way may be an offence under section 72 of the 2018 Act.

(3) This sub-paragraph applies to an individual who is to be given a Scottish child payment under a determination made on the basis that the individual has ongoing entitlement to a Scottish child payment.

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<sup>(19)</sup> 2014 asp 10.

(4) This sub-paragraph applies to a person acting on behalf of an individual to whom sub-paragraph (3) applies in relation to any application for a Scottish child payment or the determination of the individual's entitlement.

#### **Lifting of duty to notify change of circumstances**

**27.**—(1) A duty to notify the Scottish Ministers about a change of circumstances placed on a person under regulation 27 or paragraph 26 ceases to apply when—

- (a) it is lifted under sub-paragraph (2), or
- (b) it stops being the case that a change in any of the circumstances to which the duty relates can affect someone's entitlement to be given a Scottish child payment.

(2) The Scottish Ministers may lift a duty placed on a person under regulation 27 or paragraph 26 by informing the person that the duty is lifted.

(3) Under sub-paragraph (2), the Scottish Ministers may lift a duty as it relates to some or all of the changes in circumstances which the person has a duty to notify them about.

#### **Right to support**

**28.**—(1) The Scottish Ministers must comply with an individual's wish to have another person ("a supporter") present during any discussion relating to the individual's entitlement to a Scottish child payment, unless the wish is unreasonable.

(2) The Scottish Ministers' duty under sub-paragraph (1) includes ensuring that any person acting on their behalf complies with such a wish, unless the wish is unreasonable.

(3) The role of a supporter is to support the individual in question during the discussion, and includes making representations on the individual's behalf.

(4) Nothing in this paragraph is to be read as requiring the Scottish Ministers to provide or pay for a supporter.

## **PART 6**

### **Recovery of value of assistance**

#### **Liability for assistance given in error**

**29.**—(1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual due to an error (but see paragraph 30).

(2) For the avoidance of doubt, the individual's liability under sub-paragraph (1) is limited to the difference in value between—

- (a) the assistance that was given, and
- (b) the assistance (if any) that would have been given had the error not been made.

(3) If the assistance was given in a form other than money, its value for the purposes of this paragraph is what giving it cost the Scottish Ministers (excluding any administration costs).

(4) In this paragraph and paragraph 30, references to an error are to—

- (a) an error in the performance of a function conferred by virtue of these Regulations, including a decision under regulation 13 being made—
  - (i) wrongly, or
  - (ii) correctly but on the basis of—

- (aa) incorrect information, or
  - (bb) an assumption which proves to be wrong.
- (b) a new decision under regulation 13 not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

### **Exclusion from liability**

**30.**—(1) An individual has no liability under paragraph 29(1) in respect of assistance given due to an error if the error is neither—

- (a) the individual’s fault, nor
- (b) the kind of error that an individual could reasonably be expected to notice.

(2) For the purpose of this paragraph, an error is an individual’s fault if it is caused or contributed to by the individual—

- (a) providing false or misleading information,
- (b) failing to notify the Scottish Ministers about a change in circumstances in breach of a duty to do so under regulation 27 or paragraph 26, or
- (c) causing another person to do either of those things.

(3) In considering whether an error is of a kind that an individual could reasonably be expected to notice, the following are amongst the matters to which regard is to be had—

- (a) the extent to which the value of the assistance given in error exceeds the value of the assistance that would have been given (if any) had the error not been made,
- (b) whether any information given to the individual by the Scottish Ministers prior to, or immediately after, the assistance being given would have alerted a reasonable person to the fact that a decision had been, or was to be, made on the basis of incorrect information or a wrong assumption.

(4) In—

- (a) sub-paragraph (2)(a), the reference to providing information includes making a statement,
- (b) sub-paragraph (3)(b), the reference to information given to the individual by the Scottish Ministers does not include information explaining why the Ministers consider the assistance to have been given in error.

### **Consideration for debtor’s circumstances**

**31.**—(1) This paragraph applies to decisions of the Scottish Ministers about—

- (a) whether to seek to recover money owed under paragraph 29, and
- (b) the method by which money owed under that paragraph is to be recovered.

(2) In making a decision to which this paragraph applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers).

### **Exclusion of other rights of recovery**

**32.**—(1) An individual given assistance in error has no non-statutory obligation based on redress or unjustified enrichment to pay the value of that assistance to the Scottish Ministers.

(2) In sub-paragraph (1)—

- (a) “non-statutory obligation” means an obligation that arises from a rule of law rather than an enactment,

- (b) the reference to assistance being given in error is to be construed in accordance with paragraph 29(4).

#### **Liability where assistance given for period after death**

**33.**—(1) An individual’s estate is liable to pay the Scottish Ministers the value of any assistance that was given to the individual under regulation 17 in respect of a period after the individual’s death.

(2) For the avoidance of doubt, assistance may be regarded as having been given to an individual for the purposes of this paragraph despite being given after the individual’s death.

## **PART 7**

### **Coronavirus – relaxation of deadlines**

#### **Re-determination and appeal deadlines**

**34.**—(1) A request for a re-determination is valid, despite being made after the expiry of the period described in sub-paragraph (3) of paragraph 14, if the person deciding whether the individual has a good reason for not requesting a re-determination sooner decides that the individual has a good reason that is related to coronavirus.

(2) An appeal may be brought under paragraph 19, despite the appeal application being made after the expiry of the period described in sub-paragraph (1)(c) of paragraph 21, if the First-tier Tribunal gives permission for the appeal to be brought under sub-paragraph (1)(b) of that paragraph on the basis of being satisfied that the good reason for the application not being made sooner is related to coronavirus.

(3) Any provision of Scottish Tribunal Rules that would (but for this sub-paragraph) have the effect of precluding an appeal being brought by virtue of sub-paragraph (2) is to be disregarded to the extent that it would have that effect.

(4) In this paragraph, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.

#### **Timing of applications for Scottish child payment**

**35.**—(1) Sub-paragraph (2) applies where these Regulations make an individual’s eligibility for a Scottish child payment depend (in any way) on an application being made by a particular time.

(2) The person determining an individual’s entitlement to the assistance may treat the individual’s application as having been made by that time if satisfied that the reason for its not being made sooner is related to coronavirus.

(3) For the avoidance of doubt, the provisions of these Regulations that make a child’s age at the time an application is made material to the determination of an individual’s entitlement to a Scottish child payment are to be understood to make the individual’s eligibility depend on the application being made by a particular time (namely the time at which the child ceases to be the specified age or fall within the specified age bracket).

(4) In this paragraph, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about a Scottish child payment, a type of assistance to be given by the Scottish Ministers under section 79 of the Social Security (Scotland) Act 2018 (“the 2018 Act”). The payment will be provided as an additional payment to top-up the forms of reserved assistance specified in regulation 14, to persons who meet the eligibility criteria in regulation 18.

Part 2 of the Regulations provides for interpretation.

Part 3 of the Regulations sets out who is eligible to be given a Scottish child payment and provides for when continuing eligibility is to cease. It also states the value of the assistance that is to be given. Assistance can only be given in monetary form or given (in whole or in part) by way of deduction from an outstanding liability to the Scottish Ministers under these Regulations or section 63 of the 2018 Act.

Part 4 of the Regulations makes transitory provision for the treatment of applications during a 14 week period beginning with the day on which the Regulations come into force with entitlement to assistance being determined at the end of that period.

The schedule to the Regulations deals with procedural matters connected with applications for a Scottish child payment, decisions on applications and appeals. Part 2 of the schedule provides for circumstances in which a determination must, or can, be made without an application for assistance having been made.