

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,

- (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—

- (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⁽¹⁾ 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—

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

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014(2), 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.

(2) 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.