

SCHEDULE

Procedural matters

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.