

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2020 No.

SOCIAL SECURITY

The Scottish Child Payment Regulations 2020

Made - - - - *2020*

Coming into force in accordance with regulation 2

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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(a) 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 consulted the Scottish Commission on Social Security.

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, Part 3 makes provision about eligibility and the assistance that is to be given to qualifying individuals in respect

(a) 2018 asp 9. The regulation-making powers conferred by the Act include the power to make different provision for different purposes by virtue of section 96(1).

of a child (referred to in these Regulations as a “Scottish child payment”), and Part 4 makes consequential provision for uprating of assistance amounts [and transitional provision during an initial period after these Regulations come into force].

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

PART 2

Interpretation

General

General interpretation

4. In these Regulations—

- (a) “the 2018 Act” means the Social Security (Scotland) Act 2018(a),
- (b) references to a determination of an individual’s entitlement to a Scottish child payment have the same meaning as given by section 25 of the 2018 Act in relation to a determination under sections 37, 43 and 49 of that Act.

Expressions about time and timing

Meaning of “working day”

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

- (a) a Saturday,
- (b) a Sunday, or
- (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(b).

Meaning of “birthday”, for children born on 29th February

6. In a non-leap year, the birthday of a child born on 29 February is to be taken to be 28 February.

Calculations involving months [*Inserted in case relevant to eventual commencement provision, not currently relevant.*]

7.—(1) Where a day (“day 1”) is described as falling a specified number of months before or after another day (“day 2”), the date of day 1 is to be determined as follows.

(2) Count backwards or forwards (as the case may be) the specified number of months from the month in which day 2 falls.

(3) If the month arrived at in accordance with paragraph (2) has a day corresponding to day 2, day 1 is that day of the month arrived at.

(4) If the month arrived at in accordance with paragraph (2) has too few days to have a day corresponding to day 2, day 1 is the last day of the month arrived at(c).

(a) 2018 asp 9.

(b) 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.

(c) For example, if a child is born on 31 August, the day falling 6 months after the day the child is born is 28 February (or 29 February in a leap year).

Meaning of “week”

8. A “week” means a period of 7 days starting with the day on which an application for assistance is made (see paragraphs 1, 10(3) and 11(3) of the schedule).

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 of the following statements is true:—

- (a) the child is a dependant of the individual on the day in question,
- (b) the child is a dependant of the individual’s partner on the day in question,
- (c) the individual is one of the child’s parents and, on the day in question—
 - (i) normally lives with the child,
 - (ii) is under 20 years of age, and
 - (iii) is a dependant of another individual,
- (d) the individual is, on the day in question, a kinship carer for the child.

Meaning of “partner”

10. An individual is the partner of another individual on a day only if, on that day, the two individuals would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012(a) (see section 39 of that Act(b)).

Meaning of “kinship carer”

11. An individual is a kinship carer for a child on a day if—

- (a) the individual 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(c), and
- (b) on the day in question, the child lives with the individual (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 individual, the individual’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(d),
 - (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(e), 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(f).

(a) 2012 c.5.

(b) Section 39 is amended by S.I. 2014/3229 and S.I. 2019/1458.

(c) 2014 asp 8.

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

(e) 1989 c. 41. Section 105(4) is substituted by S.I. 2016/413.

(f) 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).

Meaning of “dependant”

12.—(1) An individual (“person A”) is to be regarded as a dependant of another individual (“person B”) on a day only if—

- (a) paragraph (2) applies, or
- (b) on that day person B is a kinship carer for person A.

(2) This paragraph applies if—

- (a) person B 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) person A is recognised to be a child for whom person B 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 person B referred to in paragraph (2) does not include any amount in respect of person A due to a rule that restricts the number of dependants in respect of whom person B can be given that type of assistance.

Expressions about social security assistance

Meaning of references to specified kinds of assistance

13. References in these Regulations to a kind of assistance specified in this regulation are to the following:—

- (a) child tax credit,
- (b) income-based jobseeker’s allowance,
- (c) income-related employment and support allowance,
- (d) income support,
- (e) state pension credit,
- (f) universal credit,
- (g) working tax credit.

Meaning of references to assistance being awarded

14.—(1) An individual is not to be regarded as having been awarded a kind of assistance described in regulation 13 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

15. “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(a).

(a) 2012 c.5.

PART 3

Eligibility and assistance to be provided

Eligibility for a Scottish child payment

- 16.** An individual is eligible for a Scottish child payment in respect of a child if—
- (a) the individual applies for the payment (see paragraph 1(2) of the schedule in relation to when an application is to be treated as made),
 - (b) the child is under 6 years of age on the day the application is made,
 - (c) no-one has received, or is due to receive, a Scottish child payment in respect of the child and the period that the payment will cover,
 - (d) on the day the application is made the individual is ordinarily resident in Scotland,
 - (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 13.

Continuing eligibility

17. Where an individual has been properly awarded a Scottish child payment in respect of a child and a period, the individual will be eligible for a Scottish child payment in respect of that child and 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 13 is made to the individual for any day in that week,
- (e) any week in respect of which the individual requests that no further payments be made.

Value and form of a Scottish child payment

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

(2) Following a determination that an individual is entitled to a Scottish child payment, payments to an individual with continuing entitlement as described in regulation 17 are to be made in respect of periods of four weeks, in arrears.

(3) A Scottish child payment may only be given as money, except as provided for by paragraph (4).

(4) Where an individual has an outstanding liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), or under that section as applied by paragraph 17(2)(f) of the schedule of these Regulations, the Scottish Ministers may make a deduction from any Scottish child payment that is to be given to the individual to meet that liability, or to contribute towards meeting that liability.

(5) The Scottish Ministers must have regard to the financial circumstances of the individual who has the liability (so far as those circumstances are known to the Ministers) in deciding whether and to what extent to make a deduction under paragraph (4).

PART 4

Consequential [and transitional] provision

Duty to consider effects of inflation and to uprate the Scottish child payment

19.—(1) In section 77 of the 2018 Act (duty to consider effects of inflation), after “Chapter 2” insert “and in regulations under section 79”.

(2) In the heading to section 78 of the 2018 Act (duty to uprate assistance), for “and funeral expense assistance” substitute “, funeral expense assistance and the Scottish child payment”.

(3) In that section—

(a) omit the “and” after subsection (1)(c),

(b) after subsection (1)(d) insert—

“and

(e) the Scottish Child Payment Regulations 2020 (S.S.I. 2020/xxx),”.

Applications for assistance – arrangements for initial period

20. [Marker that transitional provision may be needed for a period when applications start to be received.]

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

SCHEDULE
Procedural matters

Regulation 3(2)

PART 1

Applications and determination of applications

Requirement for applications

1.—(1) Except as provided for by Part 4 of this schedule, an individual is not entitled to a Scottish child payment unless an application is made to the Scottish Ministers.

(2) An application is to be treated as made on the day it is received by the Scottish Ministers.

(3) In a case where, by virtue of a paragraph of Part 4 of this schedule, a determination is to be, or has been, made without an application, references in these Regulations to the day the application is made are to be read in accordance with that paragraph.

(4) 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 assistance applied for if the application were treated as made on the day they received it, and

(b) would be eligible for the assistance 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.

(5) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

(a) made in the form, and

(b) accompanied by the evidence,

required by the Scottish Ministers.

(6) 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 10(2).

(7) An individual who has made an application for a Scottish child payment may request that the Scottish Ministers disregard it, and in that case the Scottish Ministers are not to determine the individual's entitlement and the duty in paragraph 2(1) ceases to apply.

Determination of entitlement

2.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment on receiving an application or when required to do so by Part 4 of this schedule.

(2) Having made a determination 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 3 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 8 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.

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

(4) The latest determination of an individual's entitlement to a Scottish child payment in respect of a given period supersedes any earlier determination insofar as it deals with the individual's entitlement to that payment in respect of the same period, and accordingly the individual is not entitled, and is not to become entitled, to be given any assistance in respect of that period by the earlier determination insofar as it has been superseded.

(5) The Scottish Ministers must give an individual whatever Scottish child payments the individual is entitled to be given under a determination of the individual's entitlement to assistance.

(6) 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.

(7) If the individual fails to provide information requested under sub-paragraph (6) 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 16, or (as the case may be) that the individual has no continuing entitlement under regulation 17.

Multiple determinations involving the same child

3.—(1) Where the Scottish Ministers are required by paragraph 2 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 determine that two or more individuals are eligible for a Scottish child payment in respect of the child and the period (see regulations 16 and 17), 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 two or more individuals have been awarded assistance as described in sub-paragraph (4)(a), the individual whose determination is to be made first is entitled to the payment,
- (c) 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,

- (d) where none of the individuals have been awarded assistance as described in sub-paragraph (4)(a), and two or more individuals have been awarded child benefit as described in sub-paragraph (4)(c), the individual whose determination is to be made first is entitled to the payment,
- (e) 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)(c), the individual whose determination is to be made first 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 2 (whether on receipt of an application from the individual or by virtue of Part 4) before making any other determination.

PART 2

Re-determination of entitlement

Right to request re-determination and periods allowed

4.—(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 2(2)) 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 within 31 days beginning with the day that the individual is informed of the determination.

(3) A request for re-determination is valid if it is made after the time permitted by sub-paragraph (2), but before the end of the day that falls one year after the day on which the individual is informed of the determination, if the individual has a good reason for not requesting a re-determination sooner (see paragraph 5).

(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 an application 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 10(2).

Late requests for re-determination

5.—(1) It is for the Scottish Ministers, or on appeal under paragraph 10(2), the First-tier Tribunal for Scotland, to decide whether, for the purpose of paragraph 4(3), the 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 10(2).

Duty to re-determine and period allowed

6.—(1) On receiving a valid request under paragraph 4 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) 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.

(3) If the individual fails to provide information requested under sub-paragraph (2) 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 16, or (as the case may be) that the individual has no continuing entitlement under regulation 17.

(4) The Scottish Ministers must aim to make that determination—

- (a) within 16 working days beginning with 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 4(3) applies (late requests), within 16 working days of 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.

(5) If the Scottish Ministers fail to make the determination within a period of 16 working days as described in sub-paragraph (4)—

- (a) their duty to make the determination ends (but they may still make it), and
- (b) paragraphs 7 and 8 apply.

(6) Having made a determination under sub-paragraph (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 8 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.

(7) The Scottish Ministers must fulfil their duty under sub-paragraph (6)(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

7.—(1) Where the Scottish Ministers fail to make a determination under paragraph 6 within the period allowed by paragraph 6(4), 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 2 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 3

Appeals

Right to appeal a determination and how to initiate an appeal

8.—(1) An individual may appeal to the First-tier Tribunal for Scotland—

- (a) against a determination under paragraph 6 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 2.

(2) This sub-paragraph applies where—

- (a) having been informed of a determination under paragraph 2 of the individual’s entitlement to a Scottish child payment, the individual has made a request for a re-determination under paragraph 4, and
- (b) the Scottish Ministers have failed to make a determination under paragraph 6 in consequence of that request within the period of 16 working days described in paragraph 6(4).

(3) To bring an appeal, an individual must submit to the Scottish Ministers the form provided under paragraph 6(6)(b) or (as the case may be) paragraph 7(1)(b) in relation to the determination.

Duties of the Scottish Ministers in relation to an appeal

9. Subsections (2) to (5) of section 47 of the 2018 Act (duties of Scottish Ministers on receipt of an appeal form) apply in relation to a form received under paragraph 8 and information used to make the determination in question in the same manner as they apply to a form provided under section 44 or 45 of that Act.

Deadlines for appealing, powers of appellate bodies, right to appeal process decisions etc.

10.—(1) Sections 48 and 49 of the 2018 Act (deadline for appealing and power of the First-tier Tribunal to determine entitlement) apply in relation to an appeal under these Regulations as they apply to an appeal under section 46 of the 2018 Act.

(2) Section 61 of the 2018 Act (appeal against process decisions) applies in relation to an appeal to the First-tier Tribunal against a process decision described in paragraphs 1(6), 4(5) or 5(2)(b) of this schedule as it applies to an appeal under sections 38, 41(3) and 42 of the 2018 Act.

(3) An appeal under these Regulations is to be conducted in accordance with the Scottish Tribunal Rules that apply to an appeal under section 46 of the 2018 Act.

PART 4

Determination without application

Determination following official error

11.—(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 wrongly made resulting in the individual not being given a payment for which the individual was eligible,
 - (c) the Scottish Ministers are not considering a request for a re-determination of the individual's entitlement to the 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 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 backdated award of assistance

12.—(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) a backdated award of assistance of a kind specified in regulation 12(2)(a) is made in circumstances in which regulation 12(2)(b) applies, or
- (b) a backdated award of assistance of a kind specified in regulation 13 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.

13.—(1) In making a determination required by paragraph 12 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 12, 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.

14.—(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 they—

- (a) consider that a change in circumstances means that an individual is no longer entitled to such a payment,
- (b) wish to alter the amount that an individual will be paid to introduce, alter or remove a deduction under regulation 18,

- (c) wish to make an award of a Scottish child payment in relation to that child to a different person following a determination that that other person is to be entitled to the payment in respect of the child (see paragraph 3), or
- (d) consider, as a result of information they have received since making the determination that the individual was entitled to a Scottish child payment, that the determination was made incorrectly.

(2) In sub-paragraph (1)(a), “a change in circumstances” means any of the matters listed in regulation 17.

Determination following award of Scottish child payment in respect of another child

15.—(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 continues to be eligible for that payment (see regulation 17),
- (b) the Scottish Ministers become aware that the individual may have 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.

Determination following cessation of award of Scottish child payment

16.—(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 17(a) (where the individual ceased to have responsibility for the child), or
- (b) regulation 17(d) (where no award of assistance of a kind specified in regulation 13 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).

PART 5

Further procedural provision

Provisions in the 2018 Act

17.—(1) The sections of the 2018 Act listed in sub-paragraph (2) apply in relation to Scottish child payments as they apply to assistance provided under Part 2 of that Act, with the modifications that—

- (a) references to sections of the 2018 Act are to be read as references to the equivalent provision in or as applied by these Regulations, and
 - (b) the reference in section 59 to “any discussion or assessment relating to the individual’s entitlement to a type of assistance described in Chapter 2” of the 2018 Act is to be read as a reference to any discussion relating to the individual’s entitlement to assistance under these Regulations.
- (2) The sections are—
- (a) section 56 (duty to notify change of circumstances),
 - (b) section 57 (lifting of duty to notify change in circumstances),
 - (c) section 58 (appointment of person to act on behalf of individual),
 - (d) section 59 (right to support) (but see sub-paragraph (1)(b)),
 - (e) section 62 (presumption about when information is received),
 - (f) sections 63 and 64 (liability, and exclusion from liability, for assistance given in error)
 - (g) section 65 (consideration of debtor’s circumstances) (see also regulation 18(5)),
 - (h) section 67 (exclusion of other rights of recovery)
 - (i) section 69 (liability where assistance given for a period after death),
 - (j) sections 71 to 74 (offences).

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 payment will be provided as an additional payment to top-up the forms of reserved assistance described in regulation 13, to persons who meet the eligibility criteria in regulation 16.

Part 2 of the Regulations provides for the interpretation of expressions.

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 applied towards meeting an outstanding liability to the Scottish Ministers.

Part 4 of the Regulations makes consequential [and transitional] provision.

The schedule to the Regulations deals with procedural matters connected with applications for a Scottish child payment, decisions on applications and appeals. Part 4 of the schedule provides for circumstances in which a determination must, or can, be made without an application for assistance having been made.