
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

**The Disability Assistance for Children and
Young People (Scotland) Regulations 2021**

PART 7

**Re-consideration of entitlement to Child Disability
Payment: determination without application**

Determination following error - overpayments

33.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Child Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Child Disability Payment (“the original determination”),
 - (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
 - (i) an award of Child Disability Payment to which the individual was not entitled, or
 - (ii) a higher 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 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 Child Disability Payment, that has not yet been determined.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
- (a) the information—
 - (i) provided in the application that led to the original determination, and
 - (ii) any other information they have obtained in connection with that application,
 - (b) any other information they have obtained in connection with the individual’s entitlement to Child Disability Payment, and
 - (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Child Disability Payment.
- (3) In this regulation references to an “error” are to—
- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
 - (i) wrongly, or
 - (ii) correctly but on the basis of—
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong, or

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- (b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.