
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

PART 6

Re-consideration of entitlement to Carer Support Payment: determination without application

Consideration of entitlement after specified period

35. The Scottish Ministers must make a determination of an individual's entitlement to Carer Support Payment, without receiving an application, after the end of the period specified (if any) in—

- (a) the individual's notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49,

of the 2018 Act.

Determination following change of circumstances etc.

36. The Scottish Ministers must make a determination of an individual's entitlement to Carer Support Payment, without receiving an application, where the individual has an ongoing entitlement to Carer Support Payment and they become aware—

- (a) of a change of circumstances whether or not notified by the individual in accordance with section 54 or 56 of the 2018 Act,
- (b) that a determination of an individual's entitlement was made in ignorance of a material fact which is likely to result in an alteration to the amount of Carer Support Payment payable to the individual or which is likely to mean that the individual is no longer entitled to Carer Support Payment,
- (c) that the individual has died,
- (d) that the cared for person has died,
- (e) that the individual has notified the Scottish Ministers that they wish for their entitlement to assistance to begin on a date prior to the day on which their application was treated as made, provided that—
 - (i) the date chosen by the individual is no more than 13 weeks prior to the day on which their application was treated as made, and
 - (ii) the individual satisfied the eligibility requirements set out in Part 3 of these Regulations on that chosen date,
- (f) of an alteration of the award of Carer's Allowance which the individual was entitled to immediately before the date of transfer to Carer Support Payment in accordance with Part 2 of schedule 1, as a result of a decision made pursuant to—

- (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(1) (“the 1999 Regulations”),
 - (ii) a supersession under regulation 6 of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”)(2),
 - (iv) a redetermination under section 13 of the 1998 Act,
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998(3) (“the 1998 Order”),
 - (vii) a supersession under article 11 of the 1998 Order,
 - (viii) an appeal under article 13 of the 1998 Order, or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order,
- (g) of an alteration of the award of Carer’s Allowance which the individual was entitled to immediately before moving to Scotland in circumstances in which regulation 41 (individuals in respect of whom Carer’s Allowance is paid in another part of the United Kingdom immediately before moving to Scotland) applies, as a result of a decision made pursuant to—
- (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”),
 - (ii) a supersession under regulation 6 of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”),
 - (iv) a re-consideration under section 13 of the 1998 Act,
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998(4) (“the 1998 Order”),
 - (vii) a supersession under article 11 of the 1998 Order,
 - (viii) an appeal under article 13 of the 1998 Order, or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order.

Determination following official error - underpayments

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

- (a) they have previously made a determination of the individual’s entitlement to Carer Support 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 an award of Carer Support Payment, or

(1) S.I. 1999/991, amended by S.I. 1999/1623, S.I. 1999/1662, S.I. 1999/2750, S.I. 1999/2677, S.I. 2000/897, S.I. 2002/428, S.I. 2002/1379, S.I. 2002/1703, S.I. 2003/916, S.I. 2003/1050, S.I. 2003/1886, S.I. 2005/337, S.I. 2005/2677, S.I. 2006/832, S.I. 2007/2470, S.I. 2007/2582, S.I. 2008/1554, S.I. 2008/2667, S.I. 2008/2683, S.I. 2009/659, S.I. 2009/1490, S.I. 2010/424, S.I. 2010/840, S.I. 2010/1160, S.I. 2011/2425, S.I. 2012/824, S.I. 2012/913, S.I. 2012/919, S.I. 2012/2568, S.I. 2012/2575, S.I. 2013/2380, S.I. 2014/1097, S.I. 2015/339, S.I. 2015/1985, S.I. 2016/1145, S.I. 2017/422, S.I. 2017/1015, S.I. 2021/786, S.I. 2022/177 and S.I. 2022/1329.

(2) 1998 c. 14. Section 12 was amended by schedules 7 and 10 of the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), sections 102 and 105 of the Welfare Reform Act 2012 (c. 5), S.I. 2008/2833 and S.I. 2014/886.

(3) S.I. 1998/1506 (N.I. 10), amended by S.I. 1999/671, S.I. 2014/886 and S.I. 2015/2006 (N.I. 1).

(4) S.I. 1998/1506 (N.I. 10), amended by S.I. 1999/671, S.I. 2014/886 and S.I. 2015/2006 (N.I. 1).

- (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 Carer Support Payment, and
 - (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Minister's determination of the individual's entitlement to Carer Support Payment.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
 - (a) any information—
 - (i) provided in the application that led to the original determination,
 - (ii) they have obtained in connection with that application, and
 - (b) any other information they have obtained in connection with the individual's entitlement to Carer Support Payment.
- (3) In this regulation "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 else.

Determination following error – overpayments

- 38.**—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Carer Support Payment, without receiving an application, where—
- (a) they have previously made a determination of the individual's entitlement to Carer Support 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 Carer Support 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 Carer Support Payment, and
 - (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the Scottish Minister's determination of the individual's entitlement to Carer Support Payment, that has not yet been determined.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
- (a) any information—
 - (i) provided in the application that led to the original determination, and
 - (ii) they have obtained in connection with that application,
 - (b) any other information they have obtained in connection with the individual's entitlement to Carer Support Payment, and
 - (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Carer Support 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
- (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.

Determination to effect a deduction decision

39.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Carer Support Payment, without receiving an application, where the circumstances in paragraphs (2) and (3) apply.

(2) This paragraph applies where—

- (a) regulation 26 (form of payment – giving Carer Support Payment by way of deduction) allows Carer Support Payment to be given to the individual by way of deduction, or
- (b) Carer Support Payment is being given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

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

- (a) vary the amount of Carer Support Payment to be given by way of deduction (including introducing a deduction, where the full amount of Carer Support Payment was previously given as money),
- (b) vary any period for which the individual's Carer Support 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 Carer Support 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 Carer Support Payment by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Carer Support Payment being given by way of deduction,
- (b) wishes the Scottish Ministers to increase the amount of their Carer Support Payment that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Carer Support 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 paragraph (3) (b).