

### **Exclusion from liability**

30.—(1) Subject to sub-paragraph (5), ~~An~~ an individual has no liability under paragraph 29(1) (liability for assistance given in error) 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 paragraph 26 (duty to notify change of circumstances), 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.

(5) This paragraph does not exclude liability for assistance given in error for any period in which the individual has entitlement to child element of universal credit for the dependant.