

## SCHEDULE 1

### Regulation 41

## PART 3

### Transfer to Child Disability Payment

#### Interpretation

7. In this Part of the schedule—

“date of transfer” means the date when a transferring individual’s entitlement to Child Disability Payment begins by virtue of a determination made under paragraph 9(1),

“relevant individual” means an individual—

- (a) who has an award of Disability Living Allowance who appears to the Scottish Ministers to be likely to be eligible for Child Disability Payment,
- (b) who is—
  - (i) ordinarily resident in Scotland, or
  - (ii) someone to whom regulation 5(4) (residence and presence conditions) or 9(2) (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies,

“sufficient” means a link to Scotland that is sufficiently close that regulations 5(4) or 9(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Child Disability Payment,

“transfer notice” means the notice required by paragraph 8, and

“transferring individual” means a relevant individual on whom the Scottish Ministers have served a notice of intention to transfer in accordance with paragraph 8.

#### Notice of intention to transfer to Child Disability Payment

8.—(1) The Scottish Ministers are to notify each relevant individual of their intention to transfer that individual’s entitlement to disability assistance from an entitlement to Disability Living Allowance to an entitlement to Child Disability Payment.

(2) Notice under sub-paragraph (1) must—

- (a) be given in a way that leaves the relevant individual with a record of the information which they can show to, or otherwise share with, others,
- (b) inform the relevant individual that—
  - (i) they have been identified as a relevant individual for the purposes of transfer to Child Disability Payment,
  - (ii) the Scottish Ministers will make a determination without application to transfer the individual’s entitlement to Disability Living Allowance to an entitlement to Child Disability Payment within 13 weeks of the date of the notice (the individual will be notified when the determination is made and informed about their award and start date of Child Disability Payment), and
  - (iii) the individual’s award of Disability Living Allowance will cease immediately before the award of Child Disability Payment begins.

(3) Where a notice under sub-paragraph (1) is given in error where the individual is neither—

*Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Disability Assistance for Children and Young People (Scotland) Regulations 2021 ISBN 978-0-11-104977-8*

- (a) ordinarily resident in Scotland, nor
- (b) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in paragraph 9(1) does not apply.

(4) Where sub-paragraph (3) applies in respect of an individual and a determination under paragraph 9(1) has not been made, the Scottish Ministers are to notify the individual that the duty on the Scottish Ministers in paragraph 9(1) does not apply.

### **Determination without application of entitlement to Child Disability Payment**

**9.—**(1) The Scottish Ministers are to make a determination without application in respect of a transferring individual of that individual's entitlement to Child Disability Payment.

(2) Entitlement to Child Disability Payment under a determination under sub-paragraph (1) begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act.

(3) The determination under sub-paragraph (1) is to be made on the basis of—

- (a) such information as the Scottish Ministers have received from the Secretary of State for Work and Pensions in respect of the transferring individual's entitlement to Disability Living Allowance, and
- (b) any other information available to the Scottish Ministers that appears to them to be relevant.

(4) Subject to paragraph 11, a determination under sub-paragraph (1) must be made on the basis that the transferring individual is entitled to the components and rates of Child Disability Payment that are equivalent to those components and rates of Disability Living Allowance to which the individual was entitled immediately before the date of transfer.

(5) A determination under sub-paragraph (1)—

- (a) may be made on the assumption that whatever can be discerned about the transferring individual's circumstances from the information mentioned in sub-paragraph (3) remains accurate on the date on which the determination is made,
- (b) notwithstanding the generality of head (a), is to be made on the assumption that the conditions relating to residence and presence set out in regulations 5 to 9 (residence and presence conditions etc.) are satisfied in the individual's case, and
- (c) must be made not later than 13 weeks after the date of the notice under paragraph 8(1) unless the Scottish Ministers have—
  - (i) good reason to extend that period,
  - (ii) agreed the period for extension with the Secretary of State for Work and Pensions, and
  - (iii) notified the transferring individual of the extension and the reason for it.

### **Effect of determination on entitlement to Disability Living Allowance**

**10.** Where a determination is made under paragraph 9 that the transferring individual is entitled to Child Disability Payment, the transferring individual's entitlement to Disability Living Allowance will cease on the date their entitlement to Child Disability Payment begins.

### **Exceptions to paragraph 9(4)**

**11.** The following circumstances are exceptions to paragraph 9(4)—

- (a) a transferring individual who is either not entitled to or entitled to the lower rate of the mobility component of Disability Living Allowance immediately before the date of transfer, is entitled to the higher rate for the mobility component of Child Disability Payment where special rules for terminal illness under regulation 15 (entitlement under special rules for terminal illness) apply to that transferring individual,
- (b) a transferring individual who is not awarded the care component of Disability Living Allowance and meets the condition in regulation 11(1)(b) (care component criterion: lowest, middle or highest rate of care component) is entitled to the lowest rate of the care component of Child Disability Payment,
- (c) a transferring individual whose entitlement to either component of Disability Living Allowance was affected because they were under 16 and did not meet the requirement in section 72(1A)(b) of the Social Security Contributions and Benefits Act 1992(1), who is aged 16 or over is entitled to an increased rate of either component or both components of Child Disability Payment, and
- (d) a transferring individual, whose entitlement to the mobility component of Disability Living Allowance was affected by not meeting the requirement of regulation 12(1A) of the Social Security (Disability Living Allowance) Regulations 1991(2), who meets the condition in regulation 13(5) (mobility requirements: higher rate mobility component), is entitled to—
  - (i) the lower rate of the mobility component of Child Disability Payment where the individual was not entitled to the mobility component of Disability Living Allowance, or
  - (ii) to the higher rate of the mobility component of Child Disability Payment where the individual was entitled to the lower rate of the mobility component of Disability Living Allowance.

### **Effect of legal custody on payment of the mobility component**

**12.** Where a transferring individual is in legal detention immediately before the date of transfer and payment of the mobility component of Disability Living Allowance is suspended under regulation 3 of the Social Security (General Benefit) Regulations 1982(3), the mobility component of Child Disability Payment is to be paid at the rate equivalent to the rate of Disability Living Allowance paid to the transferring individual immediately prior to the suspension.

### **Modification of these Regulations: transferring individuals**

**13.** These Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) regulation 17 (effect of admission to a care home on ongoing entitlement to care component) and regulation 18 (effect of legal detention on ongoing entitlement to care component) are to be read as if the period of 28 days begins on the date of transfer, and
- (b) regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted.

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(1) 1992 c.4. Subsection (1A) was inserted by section 52(2) of the Welfare Reform Act 2007 (c.5).

(2) S.I. 1991/2890. Regulation 12(1A) was inserted by S.I. 2010/1651.

(3) S.I. 1982/1408.

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## Appointees

**14.**—(1) A person appointed by the Secretary of State for Work and Pensions under regulation 33 or 43 of the Social Security (Claims and Payments) Regulations 1987<sup>(4)</sup> to receive Disability Living Allowance on behalf of a transferring individual is to be treated on and after the date of transfer as though appointed by the Scottish Ministers to act on behalf of that transferring individual under section 58 (or 85B<sup>(5)</sup>) or 85A of the 2018 Act.

- (2) As soon as reasonably practicable after the date of transfer, the Scottish Ministers must—
- (a) consider whether the conditions for making an appointment in respect of the transferring individual are met (having regard to whichever of section 58(4), 85A(3) or 85B(3) of the 2018 Act applies in the transferring individual's case),
  - (b) consider whether to terminate the appointment that is treated as having been made by virtue of sub-paragraph (1) and terminate it if they consider it appropriate, and
  - (c) if they have terminated an appointment in pursuance of head (b), appoint under section 58 (or 85B) or 85A of the 2018 Act another person to act on the transferring individual's behalf if they consider it appropriate to do so.

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(4) S.I. 1987/1968, relevantly amended by S.I. 1991/2741, S.I. 2002/2469, S.I. 2003/492, S.I. 2004/696, S.I. 2005/337 and S.I. 2013/235.

(5) Section 85B is not yet in force but when commenced it will replace section 58.