

## SCHEDULE 2

### Regulation 2

## PART 1

### Short-term assistance

#### Entitlement to short-term assistance

1.—(1) Subject to sub-paragraph (2), an individual who is, or was, entitled to Adult Disability Payment under a determination made on the basis that the individual has ongoing entitlement is entitled to short-term assistance where—

- (a) a determination of the individual’s entitlement to Adult Disability Payment (“earlier determination”) has been superseded by a subsequent determination (“subsequent determination”) which has the effect that the individual is—
  - (i) no longer entitled to Adult Disability Payment, or
  - (ii) entitled to a lower amount of Adult Disability Payment,
- (b) the individual’s entitlement to Adult Disability Payment is under review within the meaning of—
  - (i) paragraph 1(2) of schedule 10 of the 2018 Act<sup>(1)</sup>, or
  - (ii) sub-paragraph (2), and
- (c) the individual—
  - (i) continues to meet the conditions as to residence and presence set out in Part 5, or
  - (ii) has transferred to become resident in another part of the United Kingdom, and the matter under review is the determination of entitlement for the 13-week period beginning in accordance with regulation 53(4) (individuals in respect of whom Adult Disability Payment is paid at the time of moving to another part of the United Kingdom).

(2) An individual’s entitlement to Adult Disability Payment is under review in terms of sub-paragraph (1)(b)(ii) if—

- (a) a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual’s entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014<sup>(2)</sup> (“the 2014 Act”), and
- (b) the First-tier Tribunal for Scotland decide not to uphold a determination of an individual’s entitlement to Adult Disability Payment in an appeal under section 46 of the 2018 Act and the First-tier Tribunal for Scotland are to make a determination of the individual’s entitlement to Adult Disability Payment under section 49 of the 2018 Act.

(3) Where—

- (a) an individual’s entitlement to Adult Disability Payment is set aside after a review in terms of sub-paragraph (2)(a), and

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(1) 2018 asp 9.

(2) 2014 asp 10.

- (b) the individual had previously been awarded short-term assistance on the basis that their entitlement to Adult Disability Payment was under review by the First-tier Tribunal prior to it making the decision that has been set aside,

the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

(4) Where—

- (a) the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), and
- (b) the Scottish Ministers had previously determined, pursuant to an application made by the individual, that the individual was not entitled to short-term assistance on the basis that the subsequent determination referred to in sub-paragraph (1)(a) was not under review,

the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

(5) An individual is not entitled to short-term assistance where the individual is no longer entitled to Adult Disability Payment as a result of a subsequent determination made under regulation 48(b) (determination following change of circumstances etc.).

(6) An individual to whom regulation 27(2) (effect of admission to a care home on ongoing entitlement to daily living component), regulation 28(2) (effect of admission to hospital on ongoing entitlement to Adult Disability Payment), regulation 30(3) (effect of legal detention on ongoing entitlement to daily living component), or regulation 32(2) (entitlement beginning while in alternative accommodation) applies is not entitled to short-term assistance in respect of the component or components for which the value is to be £0 under those regulations.

(7) Where the Scottish Ministers have made a determination under section 37 of the 2018 Act (duty to make determination) that an individual is entitled to short-term assistance, entitlement to short-term assistance begins—

- (a) where a request is made under section 41 of the 2018 Act (right to request re-determination) for a re-determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made,
- (b) where a notice of appeal is submitted under section 47 of the 2018 Act (initiating an appeal) against the determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made,
- (c) where a decision of the Scottish Ministers is made not to accept a request for a re-determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that decision is set aside by the First-tier Tribunal for Scotland,
- (d) where a request is made under section 48(1)(b) of the 2018 Act (deadline for appealing) for permission to appeal the determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made, or
- (e) where a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the 2014 Act (review of decisions) and the First-tier Tribunal for Scotland are to make a determination of the individual's entitlement to Adult Disability Payment under section 49 of the 2018 Act, on the day that the decision is set aside.

(8) Regulation 54 (periods in respect of a re-determination request) applies to short-term assistance in the same way as it applies to Adult Disability Payment.

## **Value and form**

2.—(1) The value of short-term assistance payable is to be the difference between the amount of Adult Disability Payment to which the individual was entitled under the earlier determination mentioned in paragraph 1(1)(a), and the amount of Adult Disability Payment the individual is entitled to under the subsequent determination mentioned in paragraph 1(1)(a).

(2) The form in which the short-term assistance is to be given is to be the same as the form in which Adult Disability Payment was given under the earlier determination.

(3) Where the mobility component was being paid by the Scottish Ministers to an authorised provider of vehicles for persons with disabilities in accordance with regulation 55(1) (payment of mobility component to authorised provider of vehicles for individuals with disabilities) on the day before an individual's entitlement to the mobility component ended as a result of a subsequent determination mentioned in paragraph 1(1)(a)—

- (a) the amount of short-term assistance that is payable in respect of the mobility component may be paid by the Scottish Ministers to the authorised provider, and
- (b) paragraphs (1) and (2) of regulation 55 apply to the payment of short-term assistance as they had applied to the payment of mobility component prior to the individual's entitlement ending.

(4) Regulations 44 (form of payment - giving Adult Disability Payment by way of deduction), 49 (determination following official error – underpayments), 50 (determination following error – overpayments) and 51 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Adult Disability Payment.

## **End of entitlement**

3.—(1) When an individual's entitlement to short-term assistance is to end under sub-paragraph (2), the Scottish Ministers are to make a determination without application.

(2) Entitlement to short-term assistance ends on the day—

- (a) a determination of an individual's entitlement to short-term assistance is cancelled under section 26(2) of the 2018 Act (individual's right to stop receiving assistance),
- (b) a re-determination of an individual's entitlement to Adult Disability Payment is made by the Scottish Ministers under section 43 of the 2018 Act (duty to re-determine),
- (c) the First-tier Tribunal for Scotland makes a determination under section 49 of the 2018 Act (First-tier Tribunal's power to determine entitlement) in relation to the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a),
- (d) that the First-tier Tribunal for Scotland makes a determination to refuse permission under section 48(1)(b) of the 2018 Act (deadline for appealing) to bring an appeal against the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a), or
- (e) where the individual withdraws their application to bring an appeal against the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a), on that day.

## **Reduction of payment of Adult Disability Payment where short-term assistance is paid**

4. Where an individual has received short-term assistance for a period and a determination is subsequently made that that individual is entitled to Adult Disability Payment at the same rate or at a higher rate for that period, any payment of Adult Disability Payment to be made for that period

is to be reduced by any short-term assistance and any Adult Disability Payment already paid to that individual for that period.

Regulation 57

## PART 2

### Initial period for applications

#### Initial period for applications

5.—(1) These Regulations apply to an individual who is resident in one of the local authority areas mentioned in paragraph 6 when the individual makes an application for Adult Disability Payment during the initial period for applications.

(2) An individual who is awarded Adult Disability Payment pursuant to an application made during the initial period for applications will continue to be entitled if that person moves to another local authority area in Scotland.

#### Local authority areas for initial period for applications

6. The local authority areas specified for the purposes of regulation 64 are—

- (a) in phase 1, Perthshire and Kinross, City of Dundee and Western Isles,
- (b) in phase 2, Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire and South Lanarkshire,
- (c) in phase 3, Perthshire and Kinross, City of Dundee, Western Isles, Angus, North Lanarkshire, South Lanarkshire, Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire and South Ayrshire.

Regulation 60

## PART 3

### Transfer from Personal Independence Payment to Adult Disability Payment

#### Interpretation

7. In this Part of the schedule—

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

“relevant individual” means an individual—

- (a) who has an award of Personal Independence Payment who appears to the Scottish Ministers to be likely to be eligible for Adult Disability Payment, and
- (b) who is—
  - (i) ordinarily resident in Scotland, or
  - (ii) someone to whom regulation 15(3) (residence and presence conditions) or 20(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 15(3) or 20(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Adult 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 Adult 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 Personal Independence Payment to an entitlement to Adult 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 Adult Disability Payment,

(ii) the Scottish Ministers will make a determination, without receiving an application, to transfer the individual’s entitlement to Personal Independence Payment to an entitlement to Adult Disability Payment within a period to be specified within the notice (the individual will be notified when the determination is made and informed about their award and start date of Adult Disability Payment), and

(iii) the individual’s award of Personal Independence Payment will cease immediately before the award of Adult Disability Payment begins.

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

(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 Adult Disability Payment**

**9.—**(1) The Scottish Ministers are to make a determination in respect of a transferring individual, without receiving an application, of that individual’s entitlement to Adult Disability Payment.

(2) Entitlement to Adult 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<sup>(3)</sup>.

(3) Subject to sub-paragraph (4), 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 Personal Independence Payment, and

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(3) 2018 asp 9.

- (b) any other information available to the Scottish Ministers that appears to them to be relevant.
- (4) The determination under sub-paragraph (1) does not need to be made on the basis of the information mentioned in sub-paragraph (3)(b) where—
  - (a) the individual—
    - (i) before receiving a notice under paragraph 8(1), reported a change of circumstances to the Secretary of State for Work and Pensions, which has not been taken into account for the individual’s entitlement to Personal Independence Payment, or
    - (ii) has, since receiving a notice under paragraph 8(1), notified a change of circumstances to the Scottish Ministers, and
  - (b) following the determination under sub-paragraph (1) a further determination is to be made under paragraph 12.
- (5) 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 Adult Disability Payment that are equivalent to those components and rates of Personal Independence Payment to which the individual was entitled immediately before the date of transfer.
- (6) 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 15 to 21 (residence and presence conditions etc.) are satisfied in the individual’s case, and
  - (c) must be made not later than the end of the period specified within 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 Personal Independence Payment**

10. Where a determination is made under paragraph 9(1) that the transferring individual is entitled to Adult Disability Payment, the transferring individual’s entitlement to Personal Independence Payment will cease on—

- (a) the date their entitlement to Adult Disability Payment begins, or
- (b) where paragraph 11 applies, the date their entitlement to Adult Disability Payment would have begun had paragraph 11(2) not applied to set an earlier date of entitlement.

**Exceptions to paragraph 9(5)**

11.—(1) Where the Scottish Ministers have—

- (a) received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012(4) immediately before the date of transfer, or

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(4) 2012 c. 5.

- (b) not received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012, but become aware, before they have made a determination under paragraph 9(1), that a transferring individual has a terminal illness in terms of regulation 26(7),

the determination made under paragraph 9(1) must be made on the basis that the transferring individual satisfies the conditions for the enhanced rate of both the daily living component and the mobility component of Adult Disability Payment.

- (2) Where sub-paragraph (1) applies—
  - (a) paragraphs (4) to (6) of regulation 26 do not apply, and
  - (b) the transferring individual’s entitlement to Adult Disability Payment will commence on whichever is the later of—
    - (i) the date that these Regulations come into force,
    - (ii) the day that the clinical judgement was made in accordance with regulation 26(7), or
    - (iii) the day one year before the determination was made in accordance with paragraph 9(1).

### **Change of Circumstances**

**12.**—(1) The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment (“the review determination”), without receiving an application, where—

- (a) the individual—
  - (i) before receiving a notice under paragraph 8(1), reported a change of circumstances to the Secretary of State for Work and Pensions, which had not been taken into account for the individual’s entitlement to Personal Independence Payment, or
  - (ii) has, since receiving a notice under paragraph 8(1), notified a change of circumstances to the Scottish Ministers,
- (b) the Scottish Ministers have made a determination under paragraph 9(1) (“the transfer determination”), and
- (c) the individual has not requested a re-determination under section 41 of the 2018 Act, or an appeal under section 46 of the 2018 Act, in relation to the transfer determination.

(2) The review determination is to be made as soon as reasonably practicable after the transfer determination.

- (3) The change of circumstance notified under sub-paragraph (1)—
  - (a) is not to be regarded as relating to the individual’s entitlement to Personal Independence Payment, and
  - (b) is to be taken into consideration by the Scottish Ministers in making the review determination.

(4) Where a transferring individual’s entitlement to Adult Disability Payment is determined in the review determination to be at a higher rate than the transfer determination, entitlement will begin—

- (a) if the individual notifies the change—
  - (i) within one month of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the care or mobility component,
  - (ii) within more than one month but not more than 13 months of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month,

- (iii) in any other case, from the date of notification of the change, or
- (b) if the date under sub-paragraph 4(a) is before these Regulations come into force, the date that these Regulations come into force.

(5) Where a transferring individual's entitlement to Adult Disability Payment is determined in the review determination to be at a lower rate than or at the same rate as awarded by the transfer determination, entitlement under the review determination will take effect on the day that the Scottish Ministers make the review determination.

(6) Where an individual has previously received Personal Independence Payment or Adult Disability Payment for a period and a review determination is subsequently made that the same individual is entitled to Adult Disability Payment at a higher rate for that period by virtue of this paragraph, that individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the review determination and the value of Personal Independence Payment or Adult Disability Payment to which that individual was previously entitled for that period.

### **Effect of legal detention on payment of the mobility component: 16 and 17 year olds**

**13.**—(1) Sub-paragraph (2) and (3) apply where a transferring individual—

- (a) is aged 16 or 17 on the date of transfer,
- (b) was in legal detention immediately before the date of transfer, and
- (c) was entitled to the mobility component of Personal Independence Payment immediately before the date of transfer.

(2) Entitlement to the mobility component of Adult Disability Payment of a transferring individual mentioned in sub-paragraph (1) is to begin before the date of the determination under paragraph 9(1) but not before 13 June 2022.

(3) Where the transferring individual has received payment of the mobility component of Personal Independence Payment for any period after the date on which their entitlement to the mobility component of Adult Disability Payment commences under sub-paragraph (2), any payment of Adult Disability Payment to be made for that period is to be reduced by the amount already paid to the transferring individual for the mobility component of Personal Independence Payment for that period.

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

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

- (a) regulation 32 (entitlement beginning while in alternative accommodation) is to be read as if—
  - (i) in paragraph (1) after “begins” there are the words “in terms of Part 3 of schedule 2”, and
  - (ii) in paragraph (2) for “that day” reads “the day on which the individual has been entitled to Adult Disability Payment for 28 days”,
- (b) regulation 35 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted,
- (c) in regulation 45—
  - (i) for paragraph (4) substitute—

“(4) Where an individual has previously received Adult Disability Payment or Personal Independence Payment for a period and a determination without application has subsequently been made that the individual is entitled to Adult Disability



Payment at a higher rate for that period, the individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the subsequent determination and the value of Adult Disability Payment or Personal Independence Payment to which that individual was previously entitled for that period.”,

- (ii) where regulation 45(4) as substituted by sub-paragraph (1) applies, for the period between the date when the individual’s entitlement to a higher rate of Adult Disability Payment begins and the date of the determination under regulation 46, regulation 4 (entitlement to other benefits) is treated as omitted, and
- (d) where paragraph 11, 12(6) or 13(3) applies, for the period between the date when entitlement to Adult Disability Payment begins and the date of the determination under paragraph 9(1), regulation 4 (entitlement to other benefits) is treated as omitted.

### Appointees

**15.—**(1) A person appointed by the Secretary of State for Work and Pensions under regulation 57 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013<sup>(5)</sup> to receive Personal Independence Payment 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 85B of the 2018 Act<sup>(6)</sup>.

- (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 section 85B(3) of the 2018 Act),
  - (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 85B of the 2018 Act another person to act on the transferring individual’s behalf if they consider it appropriate to do so.

Regulation 63

## PART 4

### Consequential amendments

**16.—**(1) The Social Security Contributions and Benefits Act 1992<sup>(7)</sup> is amended in accordance with paragraph (2).

(2) In section 70(2)<sup>(8)</sup> (invalid care allowance), for “disability assistance by virtue of entitlement to the care component at the middle or highest rate under regulations made under section 31 of the Social Security (Scotland) Act 2018” substitute “adult disability payment by virtue of entitlement to the daily living component at the standard or enhanced rate or child disability payment by virtue of entitlement to the care component at the middle or highest rate”.

(5) [S.I. 2013/380](#), amended by [S.I. 2021/804](#).

(6) [2018 asp 9](#). Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 ([asp 18](#)).

(7) [1992 c. 4](#).

(8) Subsection (2) was amended by [S.I. 2013/388](#), [S.I. 2013/796](#) and [S.S.I. 2021/174](#).