

SCHEDULE 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- (a) a determination of the individual’s entitlement to Adult Disability Payment (“earlier determination”) has been superseded by a subsequent determination (“subsequent determination”) which has the effect that the individual is—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⁽¹⁾, 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⁽²⁾ (“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
- (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,

(1) 2018 asp 9.

(2) 2014 asp 10.

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.