

## SCHEDULE 2

### PART 3

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

##### **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>(1)</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
- (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,

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(1) 2018 asp 9.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Disability Assistance for Working Age People (Scotland) Regulations 2022 No. 54*

- (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.