
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to transfer individuals who meet the residence and presence conditions in the Disability Assistance for Working Age People (Scotland) Regulations 2022 (“the ADP Regulations”) and are awarded Disability Living Allowance to become entitled to Adult Disability Payment (Parts 2 and 3). These Regulations also make miscellaneous amendment to the Personal Independence Payment (Transitional Provisions) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the ADP Regulations (Part 4).

Part 2 includes provisions to transfer individuals to become entitled to Adult Disability Payment by serving a notice of intention to transfer on them and making a transfer determination, providing for a transitional rate of the daily living component and the amount, form and time of payment of Adult Disability Payment, providing for when Disability Living Allowance is to cease, periods for re-determinations, special rules for transferring individuals with a terminal illness, modifications of the ADP Regulations and provision for appointees.

Part 3 includes provisions to make a review determination for a transferred individual, the time of payment, address changes of circumstances and when an increase or decrease of entitlement takes effect.

Regulation 17 makes consequential amendments to the Personal Independence Payment (Transitional Provisions) Regulations 2013 to remove the requirements on the Scottish Ministers to invite an individual who is entitled to Disability Living Allowance to apply for Personal Independence Payment.

Regulation 18 makes amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021:-

- removes unnecessary definitions,
- clarifies when an increase in Child Disability payment is made when an individual leaves alternative accommodation,
- provides for reducing the amount of Child Disability Payment paid for a period when the individual has received short-term assistance, and
- modifies the provision on payment cycles for individuals who are transferring from Disability Living Allowance to Child Disability Payment.

Regulation 19 makes amendments to the ADP Regulations:-

- removes unnecessary definitions and clarifying the definition of “qualifying services”,
- to put beyond doubt the need to consider the daily living and mobility activity tables within schedule 1 when applying regulation 17 of the ADP Regulations,
- to put beyond doubt the effect of regulation 25 on those who have only been in receipt of the daily living component,
- amends regulation 26(3) of the ADP Regulations to ensure that clients who are terminally ill will be recognised as receiving the maximum number of points for all daily living and mobility activities, and treated as though they have satisfied the criteria for the enhanced rates of both components of Adult Disability Payment,

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- adds provision to clarify when payments should resume after an individual leaves a care home, hospital or legal detention,
- to include individuals transferring from Disability Living Allowance onto Adult Disability Payment within the terms of the ADP Regulations to create an exception to the age criteria for these transferring individuals, and for a determination without application to occur if the Disability Living Allowance they were entitled to before transfer changes, once they are in receipt of Adult Disability Payment,
- to clarify the payment to be made under regulation 58(3) to individuals who move onto Adult Disability Payment from Child Disability Payment, to ensure that there is a deduction of any Child Disability Payment they have already been entitled to for the same period,
- to clarify the circumstances for a reduction of the amount of Adult Disability Payment to be paid for a period when an individual has received short-term assistance,
- makes amendments to Part 3 of schedule 2 of the ADP regulations, where provision is made for individuals transferring from Personal Independence Payment to Adult Disability Payment. These amendments extend the restrictions on the mobility component after an individual reaches the relevant age, currently detailed in regulation 25, to also apply to case transfer clients under part 3 of schedule 2 of the ADP Regulations who are terminally ill or who report a change of circumstances. An amendment is made to include new provision for when entitlement to Personal Independence Payment will end, where a client has been in receipt of Personal Independence Payment on a cycle of one week in advance and three weeks in arrears. Provision is also added to detail the payment cycles that transferees from Personal Independence Payment may receive once they are in receipt of Adult Disability Payment, and to modify the definition of “transferring individual” to ensure that it will continue to apply to all clients who have transferred from Personal Independence Payment, after their transfer is complete, and
- amends references to the ‘care component’ to be to the ‘daily living component’, and correct other minor wording errors.