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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

The Disability Assistance for Working Age  
People (Transitional Provisions and Miscellaneous  
Amendment) (Scotland) Regulations 2022

PART 2

Transfer to Adult Disability Payment

**Notice of intention to transfer to Adult Disability Payment**

3.—(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 Adult Disability Payment.

(2) Notice under 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, and

(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 Disability Living Allowance to an entitlement to Adult Disability Payment within a period to be specified within the notice (the individual will be notified when the transfer determination is made and informed about their award and start date of Adult Disability Payment),

(iii) the individual's award of Disability Living Allowance will cease—

(aa) immediately before the award of Adult Disability Payment begins, or

(bb) where a transferring individual was paid Disability Living Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Adult Disability Payment begins,

(iv) except where the individual is subject to the special rules for terminal illness in regulation 9, the Scottish Ministers will make a review determination of the individual's entitlement to Adult Disability Payment within 12 months of the date of the notice.

(3) Where a notice under 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 regulation 4(1) does not apply.

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

(5) In paragraph (3), “sufficient” means a link to Scotland that is sufficiently close that regulation 15(3) or 20(2) of the ADP Regulations would be incompatible with the applicable agreement mentioned in either of those regulations, if the relevant individual were not entitled to Adult Disability Payment,

#### **Transfer determination without application of entitlement to Adult Disability Payment**

4.—(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) A transfer determination must be made on the assumption that the transferring individual—

- (a) other than Disability Living Allowance, is not entitled to any of the benefits set out in regulation 4, and
- (b) meets the residence and presence conditions set out in regulations 15 to 21,

of the ADP Regulations.

(3) Entitlement to Adult Disability Payment under a transfer determination begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act.

(4) The transfer determination 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.

(5) Subject to regulation 9, a transfer determination must be made in accordance with regulation 5.

(6) The transfer determination does not need to be made on the basis of the information mentioned in paragraph (4)(b) where—

- (a) the individual—
  - (i) before receiving notice under regulation 3(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 Disability Living Allowance, or
  - (ii) has, since receiving a notice under regulation 3(1), notified a change of circumstances to the Scottish Ministers, and

(b) following the transfer determination, a review determination is to be made.

(7) A determination under 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 paragraph (4) remains accurate on the date on which the determination is made,
- (b) must be made no later than the end of the period specified within the notice of intention to transfer 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.

### **Entitlement to Adult Disability Payment**

5.—(1) For the purposes of a transfer determination, an individual may be awarded the daily living component of Adult Disability Payment at the transitional rate specified in regulation 6(1) instead of being awarded that component at the standard or the enhanced rate in accordance with regulation 5(2) or (3) of the ADP Regulations.

(2) A transfer determination is to be made on the basis that a transferring individual who had been entitled to the—

- (a) lowest rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the transitional rate of the daily living component of Adult Disability Payment,
- (b) middle rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the standard rate of the daily living component of Adult Disability Payment,
- (c) highest rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the enhanced rate of the daily living component of Adult Disability Payment,
- (d) lower rate of the mobility component of Disability Living Allowance immediately prior to the date of transfer is entitled to the standard rate of the mobility component of Adult Disability Payment,
- (e) higher rate of the mobility component of Disability Living Allowance immediately prior to the date of transfer is entitled to the enhanced rate of the mobility component of Adult Disability Payment.

(3) A transferring individual mentioned in paragraph (2)(e) is to be treated as though they have obtained the maximum points for each activity listed in column 1 of the table in Part 3 of schedule 1 of the ADP Regulations.

### **Amount and form and time of payment of Adult Disability Payment**

6.—(1) The weekly rate of payment of the daily living component of Adult Disability Payment is, where the transferring individual is entitled to the transitional rate, £24.45.

(2) Where an award of Adult Disability Payment is made to a transferring individual, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment—
  - (i) 4 weekly in arrears,
  - (ii) weekly in advance, or
  - (iii) where the Scottish Ministers consider that it would be unjust not to do so, at such intervals as may be specified in the notice of determination.

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

7.—(1) Where a transfer determination is made that the transferring individual is entitled to Adult Disability Payment, the transferring individual's entitlement to Disability Living Allowance will cease on—

- (a) the date their entitlement to Adult Disability Payment begins,
- (b) where a transferring individual was paid Disability Living Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Adult Disability Payment begins, or

- (c) where regulation 9 applies, the date their entitlement to Adult Disability Payment would have begun had regulation 9(2) not applied to set an earlier date of entitlement.
- (2) Where paragraph (1)(b) applies—
  - (a) section 71(7) (disability living allowance) of the Social Security Contributions and Benefits Act 1992(1), and
  - (b) regulation 4(d) of the ADP Regulations (entitlement to other benefits),
 do not apply in respect of the first week of entitlement to Adult Disability Payment.

### **Periods in respect of a re-determination request in relation to a transfer determination**

**8.—**(1) The period for requesting a re-determination of entitlement to Adult Disability Payment under section 41 of the 2018 Act (right to request re-determination) in relation to a transfer determination is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act (notice of determination) of the right to make the request.

(2) In relation to determining entitlement to Adult Disability Payment, the period allowed for re-determination in respect of a transfer determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is as soon as reasonably practicable and not more than 182 days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers,
- (b) in a case where the request for a re-determination is received by the Scottish Ministers outwith the period prescribed in paragraph (1), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual in question has a good reason for not requesting a re-determination sooner, or
- (c) in a case where the Scottish Ministers have informed the individual of their decision that the request for re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

### **Special rules for terminal illness - exception to regulation 4(5)**

**9.—**(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 72(5) of the Social Security Contributions and Benefits Act 1992(2) immediately before the date of transfer, or
- (b) not received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 72(5) of the Social Security Contributions and Benefits 1992, but become aware, before they have made a transfer determination, that a transferring individual has a terminal illness in terms of regulation 26(7) of the ADP Regulations,

the transfer determination 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 paragraph (1) applies—

- (a) paragraphs (4) to (6) of regulation 26 of the ADP Regulations do not apply, and

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(1) 1992 c. 4, relevantly amended by S.I. 2022/335.

(2) 1992 c. 4.

- (b) the transferring individual’s entitlement to Adult Disability Payment will commence on whichever is the later of—
  - (i) the date that the ADP Regulations came into force,
  - (ii) the day that the clinical judgement was made in accordance with regulation 26(7) of the ADP Regulations, or
  - (iii) the day one year before the date of the transfer determination.

### **Modification of the ADP Regulations: transferring individuals**

**10.** The ADP Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) regulation 3(3) (overview) is to be read as if —
  - (i) for “2 weekly rates of the daily living component” there were substituted “3 weekly rates of the daily living component”, and
  - (ii) after “(amount and form of Adult Disability Payment)” there were inserted “and regulation 6(1) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022(3)”,
- (b) regulation 5 (daily living component) is to be read as if—
  - (i) in paragraph (1) after “the enhanced rate” there were inserted “or, where the individual is a transferring individual as defined in regulation 2 of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022, at the transitional rate,
  - (ii) after paragraph (3) there were inserted—
    - “(3A) An individual is entitled to the daily living component at the transitional rate where regulation 5(2)(a) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 applies to the individual.” and
  - (iii) after paragraph (4)(c) there were inserted—
    - “(d) “the transitional rate” in relation to the daily living component means the weekly rate of the daily living component set in regulation 6(1) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022”,
- (c) 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 these Regulations”, and
  - (ii) in paragraph (2) for “that day” there were substituted “the day on which the individual has been entitled to Adult Disability Payment for 28 days”,
- (d) regulation 35 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted,
- (e) regulation 36 (time of payment) is treated as omitted,
- (f) regulation 45 (when an increase in level of entitlement takes effect) is treated as omitted,
- (g) regulation 46 (when a decrease in level or cessation of entitlement takes effect) is treated as omitted,

- (h) regulation 54 (periods in respect of a re-determination request) is treated as omitted in relation to a request for a re-determination in respect of a transfer determination,
- (i) where regulation 9 of these Regulations applies, for the period between the date when entitlement to Adult Disability Payment begins and the date of the transfer determination, regulation 4 (entitlement to other benefits) is treated as omitted.

### **Appointees**

**11.**—(1) A person appointed by the Secretary of State for Work and Pensions under regulation 33 of the Social Security (Claims and Payments) Regulations 1987<sup>(4)</sup> (persons unable to act) 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 85B of the 2018 Act<sup>(5)</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.

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(4) S.I. 1987/1968, relevantly amended by S.I. 1991/2741, S.I. 1999/2572, S.I. 2002/2441, S.I. 2003/492, S.I. 2005/337, S.I. 2007/2470, S.I. 2013/458 and S.I. 2021/804.

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