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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 3

Review of entitlement to Adult Disability Payment

**Review determination without application of entitlement to Adult Disability Payment**

**12.**—(1) The Scottish Ministers are to make a determination in respect of a transferred individual, without receiving an application, of that individual's entitlement to Adult Disability Payment within the period of 12 months beginning with the date of that individual's notice of intention to transfer.

(2) Paragraph (1) does not apply—

- (a) to transferred individuals to whom regulation 9 applies, or
- (b) where a transferred individual has requested a re-determination under section 41 of the 2018 Act, or made an appeal under section 46 of the 2018 Act, in relation to the transfer determination.

(3) Subject to regulations 15 (when an increase in level of entitlement takes effect) and 16 (when a decrease in level or cessation of entitlement takes effect), entitlement to Adult Disability Payment under a determination under paragraph (1) begins on the date specified in the notice of determination given to the transferred individual in accordance with section 40 of the 2018 Act.

(4) The determination under paragraph (1) is to be made on the basis of any information that—

- (a) the Scottish Ministers have received from the Secretary of State for Work and Pensions in respect of the transferred individual's entitlement to Disability Living Allowance,
- (b) the Scottish Ministers requested from the transferred individual, and
- (c) is available to the Scottish Ministers that appears to them to be relevant.

**Time of payment**

**13.** Where an award of Adult Disability Payment is made under a review determination, 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.

### **Change of circumstances**

**14.** Where the Scottish Ministers are making a review determination of an individual's entitlement to Adult Disability Payment, where the individual—

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

the change of circumstances—

- (c) is not to be regarded as relating to the individual's entitlement to Disability Living Allowance, and
- (d) is to be taken into consideration by the Scottish Ministers in making the review determination.

### **When an increase in level of entitlement takes effect**

**15.—**(1) Where, as a result of a review determination, the amount of Adult Disability Payment payable in respect of an individual is increased, or their entitlement to a component is awarded, the change takes effect on the date of transfer.

(2) Where an individual has previously received Adult Disability Payment for a period under a transfer determination and a review determination has subsequently been made that the same individual is entitled to Adult Disability Payment at a higher rate for that period, that individual is entitled to be paid the difference between the value of entitlement to Adult Disability Payment under the review determination and the value of Adult Disability Payment to which that individual was previously entitled under the transfer determination.

### **When a decrease in level or cessation of entitlement takes effect**

**16.** Where an individual's entitlement to Adult Disability Payment is determined in the review determination to be at a lower rate than, or 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.