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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 4**

Miscellaneous amendments

**Amendment of the Disability Assistance for Working Age People (Scotland) Regulations  
2022**

**19.**—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022 are amended in accordance with paragraphs (2) to (13).

(2) In regulation 2 (interpretation) —

- (a) omit the definition of “EU withdrawal agreement”,
- (b) omit the definition of “medical treatment”, and
- (c) after the definition of “previous award” insert—

““qualifying services” means accommodation, board and personal care.”.

(3) In regulation 7(2)(a) (determination of ability to carry out activities), after “schedule 1” insert “or, as the case may be, column 2 of the table in Part 3 of schedule 1”.

(4) In regulation 17(4) (serving members of Her Majesty’s forces, civil servants and their family members)—

- (a) omit the definition of “civil partnership”, and
- (b) omit the definition of “person who is living with another person as if they were in a civil partnership”.

(5) In regulation 24 (persons who have reached the relevant age: other exceptions)—

- (a) at the end of paragraph (b) omit “or”, and
- (b) after paragraph (c) insert—

“, or

(d) are a transferring individual in terms of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022.”.

(6) In regulation 25 (determination of an award after the person has reached the relevant age)—

- (a) in paragraph (1)(a)(ii), omit “of the mobility component”,
- (b) in paragraph (2), omit sub-paragraph (a), and
- (c) in paragraph (3), after sub-paragraph (b), insert—

- “(c) where the original award did not include an award of the mobility component, the Scottish Ministers may not award that component at either the standard or enhanced rate.”.
- (7) For regulation 26(3) (entitlement under special rules for terminal illness), substitute—
- “(3) An individual to whom this regulation applies is to be treated as though—
- (a) they have obtained the maximum points for each activity listed in column 1 of the tables in Part 2 and Part 3 of schedule 1, and
- (b) they have satisfied regulations 5(3) and 6(3).”.
- (8) In regulation 45 (when an increase in level of entitlement takes effect)—
- (a) in paragraph 1(a)—
- (i) for “48(c) or 48(d)” substitute “48(c), 48(d) or 48(e)”,
- (ii) after “Personal Independence Payment” insert “or Disability Living Allowance”,
- (b) in paragraph (1)(b)(i)(bb), for “care” substitute “daily living”,
- (c) in paragraph (1)(c)—
- (i) after “based on an official error”, omit “or error”,
- (ii) omit “begins”, and
- (iii) at the end, omit “or”,
- (d) after paragraph (1)(c), insert—
- “(ca) in the case of a determination made in accordance with regulation 48(a), where the period that an individual has been—
- (i) resident in a care home for the purpose of regulation 27,
- (ii) an in-patient in hospital or similar institution for the purpose of regulation 28,
- (iii) in legal detention for the purpose of regulation 30, or
- (iv) resident in a care home, an in-patient in a hospital or similar institution, or in legal detention for the purposes of regulation 32,
- has come to an end, on the day on which the individual leaves the place, or”
- (9) In regulation 46 (when a decrease in level or cessation of entitlement takes effect)—
- (a) in paragraph 1(a)—
- (i) for “48(c) or 48(d)” substitute “48(c), 48(d) or 48(e)”,
- (ii) after “Personal Independence Payment” insert “or Disability Living Allowance”,
- (b) in paragraph (1)(c), omit “or error”.
- (10) In regulation 48 (determination following change of circumstances etc.), after paragraph (d) insert—
- “(e) of an alteration of the component or rate of award of Disability Living Allowance which the individual was entitled to immediately before the date of transfer to Adult Disability Payment in accordance with regulation 4 (determination without application of entitlement to Adult Disability Payment) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022, as a result of a decision made pursuant to—
- (i) revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”),
- (ii) a supersession under regulation 6 of the 1999 Regulations,

- (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”),
- (iv) a re-consideration under section 13 of the 1998 Act ,
- (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
- (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998 (“the 1998 Order”),
- (vii) a supersession under article 11 of the 1998 Order,
- (viii) an appeal under article 13 of the 1998 Order, or
- (ix) an appeal to the Commissioner under article 15 of the 1998 Order.”

(11) In regulation 58(3) (applications by individuals entitled to Child Disability Payment), substitute—

“(3) Where an individual receives a determination that they are entitled to a rate of Adult Disability Payment which is higher than the rate of Child Disability Payment they were entitled to immediately before their entitlement to Adult Disability Payment begins, paragraph (4) applies.

(4) The individual is to receive a payment equal to the value of Adult Disability Payment they would have received for the period specified in paragraph (5), reduced by the amount of Child Disability Payment that they were entitled to for the same period.

(5) The period specified for the purposes of paragraph (4) is the period between the date—

- (a) their entitlement to Adult Disability Payment would have begun if this regulation did not apply to the individual, in terms of regulation 35(4) to (6), and
- (b) their entitlement to Adult Disability Payment begins in terms of paragraph (2).”.

(12) In Part 1 of schedule 2 (short-term assistance), for paragraph 4 (reduction of payment of adult disability payment where short-term assistance is paid), substitute—

**“Reduction of Adult Disability Payment where short-term assistance is paid**

**4.** Where an individual has received short-term assistance for a period and a determination is subsequently made that the individual is entitled to Adult Disability Payment for the same period, any payment of Adult Disability Payment to be made as a result of the subsequent determination for that period—

- (a) where the individual is to be paid Adult Disability Payment at the same rate as or a lower rate than any short-term assistance and any Adult Disability Payment already paid to that individual for that period, is to be reduced to £0, and
- (b) in any other case, is to be reduced by any short-term assistance and any Adult Disability Payment already paid to that individual for that period.”.

(13) In Part 3 of schedule 2 (transfer from Personal Independence Payment to Adult Disability Payment)—

- (a) in paragraph 7, in the definition of “transferring individual”, for “a relevant individual” substitute “an individual”,
- (b) for paragraph 10 (effect of determination on entitlement to Personal Independence Payment) substitute—

**“Effect of determination on entitlement to Personal Independence Payment**

**10.—(1)** Where a determination is made under paragraph 9(1) that the transferring individual is entitled to Adult Disability Payment, the transferring individual’s entitlement to Personal Independence Payment will cease on—

- (a) the date their entitlement to Adult Disability Payment begins,
- (b) where a transferring individual was paid Personal Independence Payment 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 paragraph 11 applies, the date their entitlement to Adult Disability Payment would have begun had paragraph 11(2) not applied to set an earlier date of entitlement.

(2) Where paragraph (1)(b) applies—

- (a) section 77(4) (personal independence payment) of the Welfare Reform Act 2012(1), and
- (b) regulation 4(e) of these Regulations (entitlement to other benefits),

do not apply in respect of the first week of entitlement to Adult Disability Payment.”,

(c) in paragraph 11 (exceptions to paragraph 9(5))—

- (i) in sub-paragraph (1), before “the determination made under paragraph 9(1)”, insert “except where sub-paragraph (1A) applies,”,
- (ii) after sub-paragraph (1), insert—

“(1A) Where the transferring individual reached the relevant age as defined in regulation 22(2) when they became terminally ill under section 82 of the Welfare Reform Act 2012(2) or in terms of regulation 26(7), the restrictions in sub-paragraph (1B) apply in relation to the determination under paragraph 9(1).

(1B) The restrictions referred to in sub-paragraph (1A) are—

- (a) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the standard rate immediately before the date of transfer, then regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
  - (i) may only make an award for the standard rate of that component, and
  - (ii) may only make such an award where the entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence payment was given,
- (b) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the enhanced rate immediately before the date of transfer, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence Payment was given,
- (c) where the transferring individual was not entitled to the mobility component of Personal Independence Payment immediately before the date of transfer, the Scottish Ministers may not award that component at either the standard or enhanced rate.”, and

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(1) 2012 c. 5, amended by S.I. 2021/804 and S.I. 2022/335.

(2) 2012 c. 5.

- (iii) in sub-paragraph (2), after “sub-paragraph (1)” insert “or (1A)”,
- (d) in paragraph 12 (change of circumstances)—
  - (i) in sub-paragraph (4)(a)(i), for “care” substitute “daily living”,
  - (ii) in sub-paragraph 4(a)(ii), for “care” substitute “daily living”, and
  - (iii) after sub-paragraph (6) insert—
    - “(7) Where the change of circumstance notified under sub-paragraph (1) occurred after the person had reached the relevant age as defined in regulation 22(2), the restrictions in sub-paragraph (8) will apply in relation to the determination under sub-paragraph (1).
    - (8) The restrictions referred to in sub-paragraph (7) are—
      - (a) where the transfer determination awarded the mobility component at the standard rate then, regardless of whether the award would have otherwise been for the enhanced rate, the Scottish Ministers—
        - (i) may only make an award for the standard rate of that component, and
        - (ii) may only make such an award where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the transfer determination was given,
      - (b) where the transfer determination awarded the mobility component at the enhanced rate, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the transfer determination was given,
      - (c) where the transfer determination did not include an award of the mobility component, the Scottish Ministers may not award that component at either the standard or enhanced rate.”, and
- (e) in paragraph 14 (modification of these regulations: transferring individuals), after sub-paragraph (b), insert—
  - “(ba) in regulation 36, for sub-paragraph (b), substitute—
  - “(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.””.