
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 2

Transfer 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.