

## SCHEDULE 1

### Regulation 42

## PART 1

### Short-term assistance

#### Entitlement to short-term assistance

1.—(1) Subject to sub-paragraph (2), an individual who is, or was, entitled to Child Disability Payment under a determination made on the basis that the individual has ongoing entitlement is entitled to short-term assistance where—

- (a) a determination of the individual’s entitlement to Child Disability Payment (“earlier determination”) has been superseded by a subsequent determination (“subsequent determination”) which has the effect that the individual is—
  - (i) no longer entitled to Child Disability Payment, or
  - (ii) entitled to a lower amount of Child Disability Payment,
- (b) the individual’s entitlement to Child Disability Payment is under review within the meaning of paragraph 1(2) of schedule 10 of the 2018 Act, and
- (c) the individual—
  - (i) continues to meet the conditions as to residence and presence set out in regulations 5 to 9, or
  - (ii) has transferred to become ordinarily resident in another part of the United Kingdom, and the matter under review is the determination of entitlement for the 13-week period beginning with the date of the transfer in accordance with regulation 36 (individuals in respect of whom Child Disability Payment is paid at the time of moving to another part of the United Kingdom).

(2) An individual is not entitled to short-term assistance where the individual is no longer entitled to Child Disability Payment as a result of a subsequent determination made under regulation 31(b) (determination following change of circumstances etc.).

(3) An individual to whom regulation 17(2) (effect of admission to a care home on ongoing entitlement to care component) or 18(2) (effect of legal detention on ongoing entitlement to care component) applies is not entitled to short-term assistance in respect of the care component of Child Disability Payment.

(4) Where the Scottish Ministers have made a determination under section 37 of the 2018 Act (duty to make determination) that an individual is entitled to short-term assistance, entitlement to short-term assistance begins—

- (a) where a request is made under section 41 of the 2018 Act (right to request re-determination) for a re-determination of the determination of the individual’s entitlement to Child Disability Payment mentioned in paragraph 1(1)(a), on the day that request is made,
- (b) where a notice of appeal is submitted under section 47 of the 2018 Act (initiating an appeal) against the determination of the individual’s entitlement to Child Disability Payment mentioned in paragraph 1(1)(a), on the day that request is made,
- (c) where a decision of the Scottish Ministers is made not to accept a request for a re-determination of the individual’s entitlement to Child Disability Payment mentioned in

paragraph 1(1)(a), on the day that decision is set aside by the First-tier Tribunal for Scotland, or

- (d) a request is made under section 48(1)(b) of the 2018 Act (deadline for appealing) for permission to appeal the determination of the individual's entitlement to Child Disability Payment mentioned in paragraph 1(1)(a), on the day that request is made.

### **Value and form**

2.—(1) The value of short-term assistance payable is to be the difference between the amount of Child Disability Payment to which the individual was entitled under the earlier determination mentioned in paragraph 1(1)(a), and the amount of Child Disability Payment the individual is entitled to under the subsequent determination mentioned in paragraph 1(1)(a).

(2) The form in which the short term assistance is to be given is to be the same as the form in which Child Disability Payment was given under the earlier determination.

(3) Where the mobility component was being paid by the Scottish Ministers to an authorised provider of vehicles for persons with disabilities in accordance with regulation 38(1) (payment of mobility component to authorised provider of vehicles for individuals with disabilities) on the day before an individual's entitlement to the mobility component ended as a result of a subsequent determination mentioned in paragraph 1(1)(a)—

- (a) the amount of short-term assistance that is payable in respect of the mobility component may be paid by the Scottish Ministers to the authorised provider, and
- (b) paragraphs (1) and (2) of regulation 38 apply to the payment of short-term assistance as they had applied to the payment of mobility component prior to the individual's entitlement ending.

(4) Regulations 27 (form of payment - giving Child Disability Payment by way of deduction), 32 (determination following official error – underpayments), 33 (determination following error – overpayments) and 34 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Child Disability Payment.

### **End of entitlement**

3.—(1) Entitlement to short-term assistance ends on the day—

- (a) a determination of an individual's entitlement to short-term assistance is cancelled under section 26(2) of the 2018 Act (individual's right to stop receiving assistance),
- (b) a determination of an individual's entitlement to Child Disability Payment is made by the Scottish Ministers under regulation 31 (determination following change of circumstances etc.),
- (c) the First-tier Tribunal for Scotland makes a decision under section 49 of the 2018 Act (First-tier Tribunal's power to determine entitlement) in relation to the subsequent determination of the individual's entitlement to Child Disability Payment mentioned in paragraph 1(1)(a), or
- (d) that the First-tier Tribunal for Scotland makes a determination to refuse permission under section 48(1)(b) of the 2018 Act (deadline for appealing) to bring an appeal against the subsequent determination of the individual's entitlement to Child Disability Payment mentioned in paragraph 1(1)(a).

(2) Where a decision of the First-tier Tribunal for Scotland mentioned in sub-paragraph (1)(c) is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014(1) (review of

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(1) 2014 asp 10.

decisions) the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

#### **Reduction of payment of Child 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 that individual is entitled to Child Disability Payment at the same rate or at a higher rate for that period, any payment of Child Disability Payment to be made for that period is to be reduced by any short-term assistance and any Child Disability Payment already paid to that individual for that period.

Regulation 40

## **PART 2**

### **Initial period for applications**

#### **Initial period for applications**

5.—(1) These Regulations apply to an individual who is resident in one of the local authority areas mentioned in paragraph 6 when they make an application for Child Disability Payment during the initial period for applications.

(2) An individual who is awarded Child Disability Payment pursuant to an application made during the initial period for applications will continue to be entitled if that person moves to another local authority area in Scotland.

#### **Local authority areas for initial period for applications**

6. The local authority areas are Perthshire and Kinross, City of Dundee and the Western Isles.  
Regulation 41

## **PART 3**

### **Transfer to Child Disability Payment**

#### **Interpretation**

7. In this Part of the schedule—

“date of transfer” means the date when a transferring individual's entitlement to Child Disability Payment begins by virtue of a determination made under paragraph 9(1),

“relevant individual” means an individual—

- (a) who has an award of Disability Living Allowance who appears to the Scottish Ministers to be likely to be eligible for Child Disability Payment,
- (b) who is—
  - (i) ordinarily resident in Scotland, or
  - (ii) someone to whom regulation 5(4) (residence and presence conditions) or 9(2) (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies,

*Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Disability Assistance for Children and Young People (Scotland) Regulations 2021 ISBN 978-0-11-104977-8*

“sufficient” means a link to Scotland that is sufficiently close that regulations 5(4) or 9(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Child Disability Payment,

“transfer notice” means the notice required by paragraph 8, and

“transferring individual” means a relevant individual on whom the Scottish Ministers have served a notice of intention to transfer in accordance with paragraph 8.

### **Notice of intention to transfer to Child Disability Payment**

8.—(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 Child Disability Payment.

(2) Notice under sub-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,

(b) inform the relevant individual that—

(i) they have been identified as a relevant individual for the purposes of transfer to Child Disability Payment,

(ii) the Scottish Ministers will make a determination without application to transfer the individual’s entitlement to Disability Living Allowance to an entitlement to Child Disability Payment within 13 weeks of the date of the notice (the individual will be notified when the determination is made and informed about their award and start date of Child Disability Payment), and

(iii) the individual’s award of Disability Living Allowance will cease immediately before the award of Child Disability Payment begins.

(3) Where a notice under sub-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 paragraph 9(1) does not apply.

(4) Where sub-paragraph (3) applies in respect of an individual and a determination under paragraph 9(1) has not been made, the Scottish Ministers are to notify the individual that the duty on the Scottish Ministers in paragraph 9(1) does not apply.

### **Determination without application of entitlement to Child Disability Payment**

9.—(1) The Scottish Ministers are to make a determination without application in respect of a transferring individual of that individual’s entitlement to Child Disability Payment.

(2) Entitlement to Child Disability Payment under a determination under sub-paragraph (1) begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act.

(3) The determination under sub-paragraph (1) 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.

(4) Subject to paragraph 11, a determination under sub-paragraph (1) must be made on the basis that the transferring individual is entitled to the components and rates of Child Disability Payment that are equivalent to those components and rates of Disability Living Allowance to which the individual was entitled immediately before the date of transfer.

(5) A determination under sub-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 sub-paragraph (3) remains accurate on the date on which the determination is made,
- (b) notwithstanding the generality of head (a), is to be made on the assumption that the conditions relating to residence and presence set out in regulations 5 to 9 (residence and presence conditions etc.) are satisfied in the individual's case, and
- (c) must be made not later than 13 weeks after the date of the notice under paragraph 8(1) 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.

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

**10.** Where a determination is made under paragraph 9 that the transferring individual is entitled to Child Disability Payment, the transferring individual's entitlement to Disability Living Allowance will cease on the date their entitlement to Child Disability Payment begins.

#### **Exceptions to paragraph 9(4)**

**11.** The following circumstances are exceptions to paragraph 9(4)—

- (a) a transferring individual who is either not entitled to or entitled to the lower rate of the mobility component of Disability Living Allowance immediately before the date of transfer, is entitled to the higher rate for the mobility component of Child Disability Payment where special rules for terminal illness under regulation 15 (entitlement under special rules for terminal illness) apply to that transferring individual,
- (b) a transferring individual who is not awarded the care component of Disability Living Allowance and meets the condition in regulation 11(1)(b) (care component criterion: lowest, middle or highest rate of care component) is entitled to the lowest rate of the care component of Child Disability Payment,
- (c) a transferring individual whose entitlement to either component of Disability Living Allowance was affected because they were under 16 and did not meet the requirement in section 72(1A)(b) of the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>, who is aged 16 or over is entitled to an increased rate of either component or both components of Child Disability Payment, and
- (d) a transferring individual, whose entitlement to the mobility component of Disability Living Allowance was affected by not meeting the requirement of regulation 12(1A) of the Social Security (Disability Living Allowance) Regulations 1991<sup>(3)</sup>, who meets the condition in regulation 13(5) (mobility requirements: higher rate mobility component), is entitled to—

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(2) 1992 c.4. Subsection (1A) was inserted by section 52(2) of the Welfare Reform Act 2007 (c.5).

(3) S.I. 1991/2890. Regulation 12(1A) was inserted by S.I. 2010/1651.

*Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Disability Assistance for Children and Young People (Scotland) Regulations 2021 ISBN 978-0-11-104977-8*

- (i) the lower rate of the mobility component of Child Disability Payment where the individual was not entitled to the mobility component of Disability Living Allowance, or
- (ii) to the higher rate of the mobility component of Child Disability Payment where the individual was entitled to the lower rate of the mobility component of Disability Living Allowance.

### **Effect of legal custody on payment of the mobility component**

**12.** Where a transferring individual is in legal detention immediately before the date of transfer and payment of the mobility component of Disability Living Allowance is suspended under regulation 3 of the Social Security (General Benefit) Regulations 1982(4), the mobility component of Child Disability Payment is to be paid at the rate equivalent to the rate of Disability Living Allowance paid to the transferring individual immediately prior to the suspension.

### **Modification of these Regulations: transferring individuals**

**13.** These Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) regulation 17 (effect of admission to a care home on ongoing entitlement to care component) and regulation 18 (effect of legal detention on ongoing entitlement to care component) are to be read as if the period of 28 days begins on the date of transfer, and
- (b) regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted.

### **Appointees**

**14.—(1)** A person appointed by the Secretary of State for Work and Pensions under regulation 33 or 43 of the Social Security (Claims and Payments) Regulations 1987(5) 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 58 (or 85B(6)) or 85A of the 2018 Act.

- (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 whichever of section 58(4), 85A(3) or 85B(3) of the 2018 Act applies in the transferring individual's case),
  - (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 58 (or 85B) or 85A of the 2018 Act another person to act on the transferring individual's behalf if they consider it appropriate to do so.

Regulation 43

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(4) S.I. 1982/1408.

(5) S.I. 1987/1968, relevantly amended by S.I. 1991/2741, S.I. 2002/2469, S.I. 2003/492, S.I. 2004/696, S.I. 2005/337 and S.I. 2013/235.

(6) Section 85B is not yet in force but when commenced it will replace section 58.

## PART 4

### Consequential amendment

**15.**—(1) The Social Security Contributions and Benefits Act 1992<sup>(7)</sup> is amended in accordance with paragraph (2).

(2) In section 70(2)<sup>(8)</sup> (invalid care allowance), after “enhanced rate” insert “or disability assistance by virtue of entitlement to the care component at the middle or highest rate under regulations made under section 31 of the Social Security (Scotland) Act 2018”.

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(7) 1992 c.4.

(8) Subsection (2) was amended by [S.I. 2013/388](#) and [S.I. 2013/796](#).