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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

The Disability Assistance for Working  
Age People (Scotland) Regulations 2022

PART 10

Determination of entitlement to Adult Disability Payment without application

**Consideration of entitlement after specified period**

**47.** The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, after the end of the period specified (if any) in—

- (a) the individual's notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49, of the 2018 Act<sup>(1)</sup>.

**Determination following change of circumstances etc.**

**48.** The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, where the individual has an ongoing entitlement to Adult Disability Payment and they become aware—

- (a) of a change of circumstances, whether or not notified by the individual in accordance with section 56 of the 2018 Act, or where the Scottish Ministers become aware that a determination of an individual's entitlement was made in ignorance of a material fact, which would possibly result in an alteration to the component or rate of Adult Disability Payment payable to the individual or which is likely to mean that the individual is no longer entitled to Adult Disability Payment,
- (b) that the individual has died,
- (c) of an alteration of the component or rate of award of Personal Independence Payment which the individual was entitled to immediately before the date of transfer to Adult Disability Payment in accordance with Part 3 of schedule 2 (transitional provisions) as a result of a decision made pursuant to—
  - (i) a revision under Part 2 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013<sup>(2)</sup>,
  - (ii) a supersession under Part 3 of those Regulations,

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(1) 2018 asp 9.

(2) S.S.I. 2013/381.

- (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”)(3),
- (iv) a re-consideration under section 13 of the 1998 Act (4), or
- (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act(5),
- (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998 (6) (“the 1998 Order”),
- (vii) a supersession under article 11 of the 1998 Order(7),
- (viii) an appeal under article 13 of the 1998 Order(8), or
- (ix) an appeal to the Commissioner under article 15 of the 1998 Order(9),
- (d) of an alteration of the component or rate of award of Personal Independence Payment which the individual was entitled to immediately before moving to Scotland in circumstances in which regulation 52 (individuals in respect of whom Personal Independence Payment is paid in another part of the United Kingdom immediately before moving to Scotland) applies, as a result of a decision made pursuant to—
  - (i) a revision under Part 2 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013,
  - (ii) a supersession under Part 3 of those 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.

#### **Determination following official error – underpayments**

**49.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Adult Disability Payment (“the original determination”),
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
  - (i) not being given an award of Adult Disability Payment, or
  - (ii) being given a lower award than that,

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(3) 1998 c. 14. Section 12 was amended by paragraph 25 of schedule 7 and paragraph 1 of schedule 10 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), S.I. 2008/2833, sections 102 and 105 of the Welfare Reform Act 2012 (c. 5) and S.I. 2014/886.

(4) Section 13 was amended by paragraph 26 of schedule 7 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and S.I. 2008/2833.

(5) Section 14 was amended by paragraph 1 of schedule 10 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and S.I. 2008/2833.

(6) S.I. 1998/1506 (N.I.10). Article 10 was amended by S.I. 2015/2006.

(7) Article 11 was amended by S.I. 1999/671 and S.I. 2015/2006.

(8) Article 13 was amended by S.I. 1999/671, S.I. 2014/886, and 2015/2006.

(9) Article 15 was amended by paragraph 22(1) of schedule 7 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) and S.I. 1999/671.

- to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual's entitlement to the Payment, and
  - (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers' determination of the individual's entitlement to Adult Disability Payment.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
- (a) the information—
    - (i) provided in the application that led to the original determination,
    - (ii) any other information they have obtained in connection with that application, and
  - (b) any other information they have obtained in connection with the individual's entitlement to Adult Disability Payment.
- (3) In this regulation, “official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone else.

#### **Determination following error – overpayments**

- 50.**—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, where—
- (a) they have previously made a determination of the individual's entitlement to Adult Disability Payment (“the original determination”),
  - (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
    - (i) an award of Adult Disability Payment to which the individual was not entitled, or
    - (ii) a higher award than that to which the individual was entitled,
  - (c) the Scottish Ministers are not considering a request for a re-determination of the individual's entitlement to the Payment, and
  - (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the Scottish Ministers' determination of the individual's entitlement to Adult Disability Payment, that has not yet been determined.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
- (a) the information—
    - (i) provided in the application that led to the original determination, and
    - (ii) any other information they have obtained in connection with that application,
  - (b) any other information they have obtained in connection with the individual's entitlement to Adult Disability Payment, and
  - (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Adult Disability Payment.
- (3) In this regulation references to an “error” are to—
- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
    - (i) wrongly, or
    - (ii) correctly but on the basis of—
      - (aa) incorrect information, or

- (bb) an assumption which proves to be wrong, or
- (b) a new determination having not been made after an assumption on the basis of which an earlier determination was made has proven to be wrong.

**Determination to effect a deduction decision**

**51.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, where the circumstances in paragraphs (2) and (3) apply.

(2) This paragraph applies where—

- (a) regulation 44 (form of payment – giving Adult Disability Payment by way of deduction) allows Adult Disability Payment to be given to the individual by way of deduction, or
- (b) Adult Disability Payment is being given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

(3) This paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Adult Disability Payment to be given by way of deduction (including introducing a deduction, where the full amount of Adult Disability Payment was previously given as money),
- (b) vary any period for which the individual’s Adult Disability Payment is to be given by way of deduction, that may have been specified in a previous determination of the individual’s entitlement, or
- (c) cease making deductions, and instead give the individual’s Adult Disability Payment in the form of money.

(4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Adult Disability Payment by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Adult Disability Payment being given by way of deduction,
- (b) wishes the Scottish Ministers to increase the amount of their Adult Disability Payment that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Adult Disability Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in paragraph (3) (b).