

## SCHEDULE 2

### Regulation 2

## 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 Adult 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- (a) a determination of the individual’s entitlement to Adult Disability Payment (“earlier determination”) has been superseded by a subsequent determination (“subsequent determination”) which has the effect that the individual is—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 Adult Disability Payment, or
  - (ii) entitled to a lower amount of Adult Disability Payment,
- (b) the individual’s entitlement to Adult Disability Payment is under review within the meaning of—
  - (i) paragraph 1(2) of schedule 10 of the 2018 Act<sup>(1)</sup>, or
  - (ii) sub-paragraph (2), and
- (c) the individual—
  - (i) continues to meet the conditions as to residence and presence set out in Part 5, or
  - (ii) has transferred to become resident in another part of the United Kingdom, and the matter under review is the determination of entitlement for the 13-week period beginning in accordance with regulation 53(4) (individuals in respect of whom Adult Disability Payment is paid at the time of moving to another part of the United Kingdom).

(2) An individual’s entitlement to Adult Disability Payment is under review in terms of sub-paragraph (1)(b)(ii) if—

- (a) a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual’s entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014<sup>(2)</sup> (“the 2014 Act”), and
- (b) the First-tier Tribunal for Scotland decide not to uphold a determination of an individual’s entitlement to Adult Disability Payment in an appeal under section 46 of the 2018 Act and the First-tier Tribunal for Scotland are to make a determination of the individual’s entitlement to Adult Disability Payment under section 49 of the 2018 Act.

(3) Where—

- (a) an individual’s entitlement to Adult Disability Payment is set aside after a review in terms of sub-paragraph (2)(a), and

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(1) 2018 asp 9.

(2) 2014 asp 10.

- (b) the individual had previously been awarded short-term assistance on the basis that their entitlement to Adult Disability Payment was under review by the First-tier Tribunal prior to it making the decision that has been set aside,

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

(4) Where—

- (a) the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), and
- (b) the Scottish Ministers had previously determined, pursuant to an application made by the individual, that the individual was not entitled to short-term assistance on the basis that the subsequent determination referred to in sub-paragraph (1)(a) was not under review,

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

(5) An individual is not entitled to short-term assistance where the individual is no longer entitled to Adult Disability Payment as a result of a subsequent determination made under regulation 48(b) (determination following change of circumstances etc.).

(6) An individual to whom regulation 27(2) (effect of admission to a care home on ongoing entitlement to daily living component), regulation 28(2) (effect of admission to hospital on ongoing entitlement to Adult Disability Payment), regulation 30(3) (effect of legal detention on ongoing entitlement to daily living component), or regulation 32(2) (entitlement beginning while in alternative accommodation) applies is not entitled to short-term assistance in respect of the component or components for which the value is to be £0 under those regulations.

(7) 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 individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (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 Adult Disability Payment mentioned in sub-paragraph (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 Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that decision is set aside by the First-tier Tribunal for Scotland,
- (d) where 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 Adult Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made, or
- (e) where a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the 2014 Act (review of decisions) and the First-tier Tribunal for Scotland are to make a determination of the individual's entitlement to Adult Disability Payment under section 49 of the 2018 Act, on the day that the decision is set aside.

(8) Regulation 54 (periods in respect of a re-determination request) applies to short-term assistance in the same way as it applies to Adult Disability Payment.

## **Value and form**

2.—(1) The value of short-term assistance payable is to be the difference between the amount of Adult Disability Payment to which the individual was entitled under the earlier determination mentioned in paragraph 1(1)(a), and the amount of Adult 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 Adult 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 55(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 55 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 44 (form of payment - giving Adult Disability Payment by way of deduction), 49 (determination following official error – underpayments), 50 (determination following error – overpayments) and 51 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Adult Disability Payment.

## **End of entitlement**

3.—(1) When an individual's entitlement to short-term assistance is to end under subparagraph (2), the Scottish Ministers are to make a determination without application.

(2) 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 re-determination of an individual's entitlement to Adult Disability Payment is made by the Scottish Ministers under section 43 of the 2018 Act (duty to re-determine),
- (c) the First-tier Tribunal for Scotland makes a determination 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 Adult Disability Payment mentioned in paragraph 1(1)(a),
- (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 Adult Disability Payment mentioned in paragraph 1(1)(a), or
- (e) where the individual withdraws their application to bring an appeal against the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a), on that day.

## **Reduction of payment 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 that individual is entitled to Adult Disability Payment at the same rate or at a higher rate for that period, any payment of Adult Disability Payment to be made for that period

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Disability Assistance for Working Age People (Scotland) Regulations 2022 No. 54*

is to be reduced by any short-term assistance and any Adult Disability Payment already paid to that individual for that period.