

## SCHEDULE

### 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,

“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.

#### Commencement Information

**II** Sch. para. 7 in force at 26.7.2021, see [reg. 1](#)

#### 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 [<sup>F1</sup>17] weeks of the date of the notice (the individual will

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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.

#### Textual Amendments

**F1** Word in *sch. para. 8(2)(b)(ii)* substituted (22.11.2021) by *The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416)*, **regs. 1, 20(1)**

#### Commencement Information

**I2** *Sch. para. 8* in force at 26.7.2021, see **reg. 1**

### 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 [F217] 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.

#### Textual Amendments

**F2** Word in sch. para. 9(5)(c) substituted (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(1)**

#### Commencement Information

**I3** [Sch. para. 9](#) in force at 26.7.2021, see [reg. 1](#)

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

[<sup>F3</sup>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 end on—

- (a) the date their entitlement to Child Disability Payment begins,
- (b) where paragraph 11 applies, the date of the determination under paragraph 9(1), or
- (c) where paragraph 12(1) applies, the date their entitlement to Child Disability Payment would have begun had paragraph 12(2) not applied to set an earlier date of entitlement.]

#### Textual Amendments

**F3** [Sch. para. 10](#) substituted (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(2)**

### Exceptions to paragraph 9(4)

11.—[<sup>F4</sup>(1)] The following circumstances are exceptions to paragraph 9(4)—

[<sup>F5</sup>(a) where the Scottish Ministers have—

- (i) received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012 immediately before the date of transfer, or
- (ii) not received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012, but become aware, before they have made a determination under paragraph 9(1), that the individual has a terminal illness in terms of regulation 15(6) (entitlement under special rules for terminal illness),

the determination made under paragraph 9(1) must be made on the basis that the transferring individual satisfies the conditions for the higher rate of the mobility component and highest rate of the care component of Child Disability Payment.]

- (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,

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- (c) a transferring individual whose entitlement to [<sup>F6</sup>one or both components] of Disability Living Allowance was affected because they were under 16 and did not meet the [<sup>F7</sup>requirements in either or both sections 72(1A)(b) or 73(4A)] of the Social Security Contributions and Benefits Act 1992(1), who is aged 16 or over is entitled to an increased rate of either component or both components [<sup>F8</sup>as the case may be] 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(2), who meets the condition in regulation 13(5) (mobility requirements: higher rate mobility component), is entitled [<sup>F9</sup>to the higher rate of the mobility component of Child Disability Payment where the individual was either not entitled to the mobility component of Disability Living Allowance or entitled to the lower rate of that component.]
  - <sup>F10</sup>(i) .....
  - <sup>F11</sup>(ii) .....

[<sup>F12</sup>(2) Where sub-paragraph (1)(a) applies—

- (a) paragraphs (7), (8) and (9) of regulation 15 (entitlement under special rules for terminal illness) are to be treated as satisfied for the individual, and
- (b) the beginning of their entitlement is to be determined in terms of regulation 15(3), as modified by paragraph 13(zb).

(3) Where a transferring individual mentioned in sub-paragraph (1)(b), (c) or (d) whose entitlement to Child Disability Payment is determined under paragraph 9(1) to be at a higher value than their entitlement to Disability Living Allowance paid immediately before that determination, entitlement is to begin before the date of that determination but not before the later of—

- (a) the date on which—
  - (i) sub-paragraph (1)(b) or (d) applies to a transferring individual by virtue of evidence supplied in relation to the transferring individual which is satisfactory to the Scottish Ministers, or
  - (ii) where sub-paragraph (1)(c) applies, when the transferring individual reaches the age of 16,
- (b) 11 October 2021.

(4) Where an individual has previously received Disability Living Allowance for a period and a determination is subsequently made that the same individual is entitled to Child Disability Payment at a higher rate for that period by virtue of this paragraph, that individual will be entitled to the difference between the value of entitlement to Child Disability Payment under the subsequent determination and the value of Disability Living Allowance to which that individual was previously entitled for that period.]

**Textual Amendments**

- F4** Sch. para. 11 renumbered as sch. para. 11(1) (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(3)(a)**
- F5** Sch. para. 11(1)(a) substituted (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(3)(b)**

(1) 1992 c.4. Subsection (1A) was inserted by section 52(2) of the Welfare Reform Act 2007 (c.5).  
 (2) S.I. 1991/2890. Regulation 12(1A) was inserted by S.I. 2010/1651.

- F6** Words in sch. para. 11(1)(c) substituted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(c)(i)**
- F7** Words in sch. para. 11(1)(c) substituted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(c)(ii)**
- F8** Words in sch. para. 11(1)(c) inserted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(c)(iii)**
- F9** Words in sch. para. 11(1)(d) substituted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(d)(i)**
- F10** Sch. para. 11(1)(d)(i) omitted (22.11.2021) by virtue of The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(d)(ii)**
- F11** Sch. para. 11(1)(d)(ii) omitted (22.11.2021) by virtue of The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(d)(ii)**
- F12** Sch. para. 11(2)-(4) inserted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(3)(e)**

**Commencement Information**

- I4** Sch. para. 11 in force at 26.7.2021, see **reg. 1**

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

**12.**—<sup>[F13]</sup>(1) 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<sup>(3)</sup>, 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.

<sup>[F14]</sup>(2) Entitlement to the mobility component of Child Disability Payment of a transferring individual mentioned in sub-paragraph (1) is to begin before the date of the determination without application made under regulation 5(1) but not before the later of the date on which—

- (a) the suspension of payment of the mobility component of Disability Living Allowance began,
- (b) 11 October 2021.

(3) Where a transferring individual is in legal detention immediately before the date of transfer and entitlement to Child Disability Payment is determined under paragraph 9(1) to be at a higher rate than the Disability Living Allowance paid immediately before that determination, paragraph 11(4) does not apply for the purposes of determining the amount of the mobility component to be paid.]

**Textual Amendments**

- F13** Sch. para. 12 renumbered as sch. para. 12(1) (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(4)(a)**
- F14** Sch. para. 12(2)(3) inserted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **20(4)(b)**

**Commencement Information**

- I5** Sch. para. 12 in force at 26.7.2021, see **reg. 1**

(3) S.I. 1982/1408.

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### 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—

- [<sup>F15</sup>(za) where paragraph 11(3) or 12(2) applies, for the period between the date when entitlement to Child Disability Payment begins and the date of the determination under paragraph 9(1), regulation 10 (entitlement to other benefits) is treated as omitted,
- (zb) regulation 15 (entitlement under special rules for terminal illness) is to be read as if—
- (i) paragraph (3)(a) reads “the individual transferred by virtue of a determination under paragraph 9(1) (“the date of transfer”)”, where that determination is made in accordance with paragraph 11(1)(a) of the schedule”,
  - (ii) paragraph (3)(b) is omitted,
  - (iii) in paragraphs (4) and (5) for “whichever date in paragraph (3)(a) or (b) applies” reads “the date in paragraph (3)(a),
  - (iv) paragraph (10) reads “Where an individual has previously received Child Disability Payment or Disability Living Allowance for a period and a determination is subsequently made that the same individual is entitled to Child Disability Payment at a higher rate for that period by virtue of this regulation, that individual will be entitled to the difference between the value of entitlement to Child Disability Payment under the subsequent determination and the value of Child Disability Payment or Disability Living Allowance to which that individual was previously entitled for that period.]
- (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
- [<sup>F16</sup>(aa) regulation 20 (entitlement to care component beginning while in alternative accommodation) is to be read as if—
- (i) in paragraph (1) after “begins” there are the words “in terms of part 3 of the schedule”,
  - (ii) in paragraph (2) “that day” reads “the day on which the individual has been entitled to Child Disability Payment for 28 days]
- (b) regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted.

#### Textual Amendments

- F15** Sch. paras. 13(za)(zb) inserted (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(5)(a)**
- F16** Sch. para. 13(aa) inserted (22.11.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/416\)](#), regs. 1, **20(5)(b)**

#### Commencement Information

- I6** Sch. para. 13 in force at 26.7.2021, see [reg. 1](#)

## 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<sup>(4)</sup> 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<sup>(5)</sup>) 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.

### Commencement Information

**I7** Sch. para. 14 in force at 26.7.2021, see [reg. 1](#)

<sup>(4)</sup> 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.

<sup>(5)</sup> Section 85B is not yet in force but when commenced it will replace section 58.

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**Changes to legislation:**

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