
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 416

The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021

Amendment of part 3 of the schedule (transfer to Child Disability Payment)

20.—(1) In paragraphs 8(2)(b)(ii) (notice of intention to transfer to Child Disability Payment) and 9(5)(c) (determination without application of entitlement to Child Disability Payment) of the schedule, for “13” substitute “17”,

(2) For paragraph 10 of the schedule (effect of determination on entitlement to Disability Living Allowance) substitute—

“**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.”.

(3) In paragraph 11 of the schedule (exceptions to paragraph 9(4))—

(a) the opening text becomes sub-paragraph (1),

(b) for head (a) substitute—

“(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(1) 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,”

(c) in head (c)—

- (i) for “either component” in the first place where it appears substitute “one or both components”,

- (ii) for “requirement in section 72(1A)(b)” substitute “requirements in either or both sections 72(1A)(b) or 73(4A)”,
- (iii) after “components” insert “as the case may be”,
- (d) in head (d)—
 - (i) for “to—” substitute “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.”,
 - (ii) omit heads (i) and (ii),
- (e) after sub-paragraph (1) insert—
 - “(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.”
- (4) In paragraph 12 of the schedule—
 - (a) the existing text becomes sub-paragraph (1),
 - (b) after sub-paragraph (1) insert—
 - “(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.”.

(5) In paragraph 13 of the schedule (modification of these regulations: transferring individuals)—

(a) before sub-paragraph (a) insert—

“(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.”,

(b) after sub-paragraph (a) insert—

“(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”.