

**Changes to legislation:** *The Disability Assistance for Working Age People (Scotland) Regulations 2022, Paragraph 1 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## SCHEDULE 2

### PART 1

#### Short-term assistance

##### Entitlement to short-term assistance

1.—<sup>F1</sup>(1) Subject to sub-paragraph (5) and (6), an individual who is, or was, entitled to Disability Payment under a determination made on the basis that the individual has ongoing entitlement is entitled to short-term assistance where—

- (a) that determination of the individual’s entitlement to Adult Disability Payment (“the earlier determination”) has been superseded by—
  - (i) a determination under section 37 of the 2018 Act, or
  - (ii) if the earlier determination is a determination—
    - (aa) of an application for Adult Disability Payment,
    - (bb) without application of an individual’s entitlement to Adult Disability Payment under paragraph 9 of this schedule (determination without application of entitlement to Adult Disability Payment),
    - (cc) without application of an individual’s entitlement to Adult Disability Payment under regulation 52 (individuals in respect of whom Personal Independence Payment is paid in another part of the United Kingdom immediately before moving to Scotland),
    - (dd) without application of an individual’s entitlement to Adult Disability payment under regulation 4 (transfer determination without application of entitlement to Adult Disability Payment) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022,
- a determination under section 43 (Scottish Ministers’ duty to re-determine) or section 49 (First-tier Tribunal’s power to determine entitlement on appeal) of the 2018 Act,
- (b) as a result of—
  - (i) the earlier determination being superseded as mentioned in sub-paragraph (1)(a), or
  - (ii) a later determination under section 43 or section 49 of the 2018 Act in relation to the individual’s entitlement to Adult Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates,
- the individual—
  - (iii) is no longer entitled to Adult Disability Payment, or
  - (iv) is entitled to less Adult Disability Payment than they were under the earlier determination,
- (c) 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, or
  - (ii) sub-paragraph (2), and
- (d) the individual—

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- (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 (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 [F<sup>2</sup>(1)(c)(ii)] if—

- (a) a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the [F<sup>3</sup>individual's entitlement to Adult Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates], is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014(1) ("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
- (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)[F<sup>4</sup>(i)], 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 [F<sup>5</sup>determination mentioned in sub-paragraph (1)(a)(i)] 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.).

[F<sup>6</sup>(6) In this part of the schedule "the earlier determination" has the meaning given in sub-paragraph (1)(a).]

(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.

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(1) 2014 asp 10.

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(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 [<sup>F7</sup>for the period to which the determination] mentioned in sub-paragraph (1) (a)[<sup>F8</sup>(i) relates], 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 [<sup>F9</sup>a determination] of the individual's entitlement to Adult Disability Payment [<sup>F7</sup>for the period to which the determination] mentioned in sub-paragraph (1)(a)[<sup>F10</sup>(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates], 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 [<sup>F7</sup>for the period to which the determination] mentioned in sub-paragraph (1)(a)[<sup>F11</sup>(i) relates], 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 [<sup>F12</sup>a determination] of the individual's entitlement to Adult Disability Payment [<sup>F7</sup>for the period to which the determination] mentioned in sub-paragraph (1) (a)[<sup>F13</sup>(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates], 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 [<sup>F14</sup>a] determination of the individual's entitlement to Adult Disability Payment [<sup>F7</sup>for the period to which the determination] mentioned in sub-paragraph (1)(a)[<sup>F15</sup>(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates], 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 [<sup>F14</sup>make a decision about] the individual's entitlement to Adult Disability Payment [<sup>F7</sup>for the period to which the determination] 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.

#### Textual Amendments

- F1** Sch. 2 para. 1(1) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(a)**
- F2** Word in sch. 2 para. 1(2) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(b)**
- F3** Words in sch. 2 para. 1(2)(a) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(c)**
- F4** Word in sch. 2 para. 1(4)(a) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(d)**
- F5** Words in sch. 2 para. 1(4)(b) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(e)**
- F6** Sch. 2 para. 1(6): inserted "after sub-paragraph (5)" (7.6.2024) by virtue of The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(k)**
- F7** Words in Sch. 2 para. 1(7)(a)-(e) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(f)**

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- F8** Words in sch. 2 para. 1(7)(a) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(g)**
- F9** Words in sch. 2 para. 1(7)(b) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(h)**
- F10** Words in sch. 2 para. 1(7)(b) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(i)**
- F11** Words in sch. 2 para. 1(7)(c) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(g)**
- F12** Words in sch. 2 para. 1(7)(d) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(h)**
- F13** Words in sch. 2 para. 1(7)(d) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(i)**
- F14** Words in sch. 2 para. 1(7)(e) substituted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(j)**
- F15** Words in sch. 2 para. 1(7)(e) inserted (7.6.2024) by The Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166), reg. 1(3), **sch. para. 16(4)(i)**

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**Commencement Information**

- I1** Sch. 2 para. 1 in force at 21.3.2022, see **reg. 1**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 4(ba) inserted by [S.S.I. 2024/141 reg. 12\(3\)](#)
- reg. 26(12)(a)(iia) inserted by [S.S.I. 2024/141 reg. 12\(4\)](#)