

Status: Point in time view as at 29/08/2022.

Changes to legislation: The Disability Assistance for Working Age People (Scotland) Regulations 2022, Paragraph 11 is up to date with all changes known to be in force on or before 03 August 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)

SCHEDULE 2

PART 3

Transfer from Personal Independence Payment to Adult Disability Payment

Exceptions to paragraph 9(5)

11.—(1) Where the Scottish Ministers have—

- (a) 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
- (b) 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 a transferring individual has a terminal illness in terms of regulation 26(7),

[^{F1}except where sub-paragraph (1A) applies,] the determination made under paragraph 9(1) must be made on the basis that the transferring individual satisfies the conditions for the enhanced rate of both the daily living component and the mobility component of Adult Disability Payment.

[^{F2}(1A) Where the transferring individual reached the relevant age as defined in regulation 22(2) when they became terminally ill under section 82 of the Welfare Reform Act 2012 or in terms of regulation 26(7), the restrictions in sub-paragraph (1B) apply in relation to the determination under paragraph 9(1).

(1B) The restrictions referred to in sub-paragraph (1A) are—

- (a) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the standard rate immediately before the date of transfer, then regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component, and
 - (ii) may only make such an award where the entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence payment was given,
- (b) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the enhanced rate immediately before the date of transfer, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence Payment was given,
- (c) where the transferring individual was not entitled to the mobility component of Personal Independence Payment immediately before the date of transfer, the Scottish Ministers may not award that component at either the standard or enhanced rate.]

(2) Where sub-paragraph (1) [^{F3}or (1A)] applies—

- (a) paragraphs (4) to (6) of regulation 26 do not apply, and
- (b) the transferring individual's entitlement to Adult Disability Payment will commence on whichever is the later of—
 - (i) the date that these Regulations come into force,

(1) 2012 c. 5.

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- (ii) the day that the clinical judgement was made in accordance with regulation 26(7), or
- (iii) the day one year before the determination was made in accordance with paragraph 9(1).

Textual Amendments

- F1** Words in sch. 2 para. 11(1) inserted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(c)(i)**
- F2** Sch. 2 para. 11(1A)(1B) inserted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(c)(ii)**
- F3** Words in sch. 2 para. 11(2) inserted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(c)(iii)**

Commencement Information

- I1** [Sch. 2 para. 11](#) in force at 21.3.2022, see [reg. 1](#)

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