

SCHEDULE

Regulation 47

PART 1

Short-term assistance

Entitlement to short-term assistance

1.—(1) Subject to sub-paragraph (5) and (6), an individual who is, or was, entitled to Pension Age 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determination of the individual's entitlement to Pension Age Disability Payment ("the earlier determination") has been superseded by—
 - (i) a determination under section 37 (duty to make a determination) of the 2018 Act, or
 - (ii) if the earlier determination is a determination—
 - (aa) of an application for Pension Age Disability Payment,
 - (bb) without application of an individual's entitlement to Pension Age Disability Payment under paragraph 9 of Part 3 of this schedule (determination without application of entitlement to Pension Age Disability Payment), or
 - (cc) without application of an individual's entitlement to Pension Age Disability Payment under regulation 44 (individuals to whom Attendance Allowance is paid moving to Scotland),
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 - (i) the earlier determination being superseded as mentioned in sub-paragraph (1)(a), or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 Pension Age Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i), or the earlier determination in sub-paragraph (1)(a)(ii), relates,
the individual—
 - (iii) is no longer entitled to Pension Age Disability Payment, or
 - (iv) is entitled to less Pension Age Disability Payment than they were under the earlier determination,
- (c) the individual's entitlement to Pension Age 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—
 - (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 45 (individuals in respect of whom Pension

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Age Disability Payment is paid at the time of moving to another part of the United Kingdom).

(2) An individual's entitlement to Pension Age Disability Payment is under review in terms of sub-paragraph (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 individual's entitlement to Pension Age 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 Pension Age 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 Pension Age Disability Payment under section 49 of the 2018 Act.

(3) Where—

- (a) an individual's entitlement to Pension Age 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 Pension Age 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 Pension Age Disability Payment under the determination mentioned in sub-paragraph (1)(a)(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 determination referred to 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 Pension Age Disability Payment as a result of a subsequent determination made under regulation 40(b) (determination following change of circumstances etc.).

(6) An individual to whom regulation 19(2) (effect of admission to a care home on ongoing entitlement to Pension Age Disability Payment), regulation 20(2) (effect of admission to hospital on ongoing entitlement to Pension Age Disability Payment), regulation 22(3) (effect of legal detention on ongoing entitlement to Pension Age Disability Payment), or 24(2) (entitlement beginning while in alternative accommodation) applies is not entitled to short-term assistance in respect of Pension Age Disability Payment 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 Pension Age Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i) relates, on the day that request is made,

(1) 2014 asp 10.

- (b) where a notice of appeal is submitted under section 47 of the 2018 Act (initiating an appeal) against a determination of the individual's entitlement to Pension Age 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, 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 Pension Age Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(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 a determination of the individual's entitlement to Pension Age 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, 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 a determination of the individual's entitlement to Pension Age 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 2014 Act (review of decisions) and the First-tier Tribunal for Scotland are to make a decision about the individual's entitlement to Pension Age Disability Payment under section 49 of the 2018 Act, on the day that the decision is set aside.
- (8) Regulation 46 (periods in respect of a re-determination request) applies to short-term assistance in the same way as it applies to Pension Age Disability Payment.
- (9) In this Part of the schedule "the earlier determination" has the meaning given in sub-paragraph (1)(a).

Value and form

- 2.—(1) The value of short-term assistance payable for any period is equal to V1-V2 where—
- (a) V1 is the value of the Pension Age Disability Payment the individual would have been given in respect of the period under the earlier determination had the earlier determination not been superseded, and
 - (b) V2 is the value of the Pension Age Disability Payment that the individual is to be given in respect of the period under what is, at the time the individual becomes eligible for short-term assistance in respect of the period, the most recent determination of the individual's entitlement to Pension Age Disability Payment.
- (2) The form in which the short-term assistance is to be given is to be the same as the form in which Pension Age Disability Payment was given under the earlier determination.
- (3) Regulations 36 (form of payment - giving Pension Age Disability Payment by way of deduction), 41 (determination following official error – underpayments), 42 (determination following error – overpayments) and 43 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Pension Age Disability Payment.

End of entitlement

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

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- (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 Pension Age 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 individual's entitlement to Pension Age Disability Payment for the period to which the determination mentioned in paragraph 1(1)(a)(i) or the earlier determination mentioned in paragraph 1(1)(a)(ii) relates,
- (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 determination of the individual's entitlement to Pension Age Disability Payment for the period to which the determination mentioned in paragraph 1(1)(a)(i) or the earlier determination mentioned in paragraph 1(1)(a)(ii) relates, or
- (e) where the individual withdraws their application to bring an appeal against the determination of the individual's entitlement to Pension Age Disability Payment for the period to which the determination mentioned in paragraph 1(1)(a)(i) or the earlier determination mentioned in paragraph 1(1)(a)(ii) relates, on that day.

Reduction of Pension Age 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 the individual is entitled to Pension Age Disability Payment for the same period, any payment of Pension Age Disability Payment to be made as a result of the subsequent determination for that period—

- (a) where the individual is to be paid Pension Age Disability Payment at the same rate as or a lower rate than any short-term assistance and any Pension Age Disability Payment already paid to that individual for that period, is to be reduced to £0, and
- (b) in any other case, is to be reduced by any short-term assistance and any Pension Age Disability Payment already paid to that individual for that period.

Regulation 48

PART 2

Initial period for applications

Initial period for applications

5.—(1) These Regulations apply to an individual who is resident in one of the local authority areas mentioned in paragraph 6 when the individual makes an application for Pension Age Disability Payment during the initial period for applications.

(2) An individual who is awarded Pension Age Disability Payment pursuant to an application made during the initial period for applications will continue to be entitled if that person moves to another local authority area in Scotland.

Local authority areas for initial period for applications

- 6. The local authority areas specified for the purposes of regulation 50 are—
 - (a) in phase 1, Argyll and Bute, Highland, Orkney Islands, City of Aberdeen, and Shetland Islands,

- (b) in phase 2, Argyll and Bute, Highland, Orkney Islands, City of Aberdeen, Shetland Islands, Moray, Aberdeenshire, East Ayrshire, North Ayrshire, South Ayrshire, Western Isles, Stirling, Clackmannan, Falkirk, Fife, Angus, City of Dundee, and Perthshire and Kinross.
- Regulation 49

PART 3

Transfer from Attendance Allowance to Pension Age Disability Payment

Interpretation

7. In this Part of the schedule—

“date of transfer” means the date when a transferring individual’s entitlement to Pension Age Disability Payment begins by virtue of a determination made under paragraph 9(1),

“relevant individual” means an individual—

- (a) who has an award of Attendance Allowance who appears to the Scottish Ministers to be likely to be eligible for Pension Age Disability Payment,
- (b) who is—
 - (i) ordinarily resident in Scotland, or
 - (ii) someone to whom regulation 9(4) (residence and presence conditions) or 14(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 9(4) or 14(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Pension Age Disability Payment, and

“transferring individual” means an individual on whom the Scottish Ministers have served a notice of intention to transfer in accordance with paragraph 8.

Notice of intention to transfer to Pension Age 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 Attendance Allowance to an entitlement to Pension Age 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 Pension Age Disability Payment,
 - (ii) the Scottish Ministers will make a determination without application to transfer the individual’s entitlement to Attendance Allowance to an entitlement to Pension Age Disability Payment within a period to be specified within the notice (the individual will be notified when the determination is made and informed about their award and start date of Pension Age Disability Payment), and
 - (iii) the individual’s award of Attendance Allowance will cease—
 - (aa) immediately before the award of Pension Age Disability Payment begins, or

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- (bb) where a transferring individual was paid Attendance Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Pension Age Disability Payment begins.
- (3) Where a notice under sub-paragraph (1) is given—
 - (a) to a transferring individual who, before a determination is made under paragraph 9(1), ceases to be ordinarily resident in Scotland, or
 - (b) in error where the individual is neither—
 - (i) ordinarily resident in Scotland, nor
 - (ii) 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.

Determination without application of entitlement to Pension Age 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 Pension Age Disability Payment.

(2) Entitlement to Pension Age 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 Attendance 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 rate of Pension Age Disability Payment that is equivalent to the rate of Attendance 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 9 to 16 (residence and presence conditions) are satisfied in the individual's case, and
 - (c) must be made not later than the end of the period specified within 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.

Effect of determination on entitlement to Attendance Allowance

10.—(1) Where a determination is made under paragraph 9 that the transferring individual is entitled to Pension Age Disability Payment, the transferring individual's entitlement to Attendance Allowance will cease on—

- (a) the date their entitlement to Pension Age Disability Payment begins, or
 - (b) where a transferring individual was paid Attendance Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Pension Age Disability Payment begins, or
 - (c) where paragraph 11 applies, the date their entitlement to Pension Age Disability Payment would have begun had paragraph 11(2) not applied to set an earlier date of entitlement.
- (2) Where paragraph (1)(b) applies—
- (a) section 64(1A) of the Social Security Contributions and Benefits Act 1992⁽²⁾, and
 - (b) regulation 4(b) of these Regulations (entitlement to other benefits),

do not apply in respect of the first week of entitlement to Pension Age Disability Payment.

Exceptions to paragraph 9(4)

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 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 the individual has a terminal illness in terms of regulation 18(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 Pension Age Disability Payment.

(2) Where sub-paragraph (1) applies—

- (a) paragraphs (3) to (5) of regulation 18 do not apply, and
- (b) the transferring individual's entitlement to Pension Age Disability Payment will commence on whichever is the later of—
 - (i) the date that these Regulations come into force,
 - (ii) the day that the clinical judgement was made in accordance with regulation 18(6), or
 - (iii) the day one year before the determination was made in accordance with paragraph 9(1).

(3) Where sub-paragraph (1)(a) applies, paragraphs (7), (8) and (9) of regulation 18 (entitlement under special rules for terminal illness) are to be treated as satisfied for the individual.

(4) Where sub-paragraph 2(b) applies—

- (a) section 64(1A) of the Social Security Contributions and Benefits Act 1992, and
- (b) regulation 4(b) of these Regulations (entitlement to other benefits),

(2) Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 41 of schedule 1 of the Pensions Act 2007 (c. 22), and paragraph 5(2) and 5(3) of schedule 9 of the Welfare Reform Act 2012 (c. 5).

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do not apply in respect of the period between commencement of entitlement to Pension Age Disability Payment and cessation of entitlement to Attendance Allowance.

Modification of these Regulations: transferring individuals

12. These Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) regulation 10 (temporary absence from the common travel area) is to be read as if—
 - (i) after paragraph (2) there is inserted—

“(3) Where an individual is temporarily absent from the common travel area on the date of transfer, the period at paragraph (1)(a) or (b) is to commence on the date Scottish Ministers identify as the commencement of the temporary absence from the common travel area”;
- (b) regulation 18 (entitlement under special rules for terminal illness) is to be read as if paragraph (10) reads “Where an individual has previously received Pension Age Disability Payment or a benefit listed in paragraph (11)(a) for a period (during which period any payment of attendance allowance paid by virtue of paragraph 10(1)(b) of the schedule is disregarded) and a determination is subsequently made that the same individual is entitled to Pension Age Disability Payment at a higher rate for that period by virtue of paragraph 9(1) of the schedule, that individual will be entitled to the difference between the value of entitlement to Pension Age Disability Payment under the subsequent determination and the value of Pension Age Disability Payment or a benefit listed in paragraph (11)(a) to which that individual was previously entitled for that period.”;
- (c) regulation 24 (entitlement beginning while in alternative accommodation) is to be read as if—
 - (i) where a transferring individual is resident in legal detention on the date of transfer—
 - (aa) paragraph (1) reads “This regulation applies where an individual is in legal detention on the day on which their entitlement to Pension Age Disability Payment begins by virtue of a determination made under paragraph 9 of Part 3 of the schedule”;
 - (bb) in paragraph (2) for “that day” reads “the day after the day on which the individual has been entitled to Pension Age Disability Payment for 28 days”, and
 - (cc) in paragraph (2), sub-paragraphs (a), (b) and (c) are treated as omitted, and
 - (dd) paragraph (3) is treated as omitted,
 - (ee) after paragraph (2) there is inserted—

“(3) For the purposes of this regulation, an individual is to be treated as though they are not in legal detention on any day on which they are an in-patient in a hospital or in a hospice.”;
 - (ii) where a transferring individual is resident in a care home or is undergoing medical or other treatment as an in-patient at a hospital or similar institution and any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds—
 - (aa) in paragraph (1)—
 - (bb) after “begins” there are the words “by virtue of a determination made under paragraph 9 of Part 3 of the schedule”, and
 - (cc) after “similar institution”, omit “, or in legal detention”;

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- (dd) in paragraph (2)—
 - (ee) for “On and after that day” substitute “On the day after the day on which the individual has been resident in a care home or an in-patient in a hospital or similar institution for 28 days (which period of 28 days includes days before the date of transfer and is calculated in accordance with regulation 19(3) or 20(3))”,
 - (ff) in head (ii) of sub-paragraph (b), after “of regulation 3(4)” for “, or” substitute “.”, and
 - (gg) sub-paragraph (c) is treated as omitted,
 - (d) regulation 27 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted,
 - (e) in regulation 28 (time of payment), for sub-paragraph (b), substitute—
 - “(b) any subsequent payment—
 - (i) 4 weekly in arrears,
 - (ii) weekly in advance, or
 - (iii) where the Scottish Ministers consider that it would be unjust not to do so, at such intervals as may be specified in the notice of determination.”,
 - (f) in regulation 37 (when an increase in level of entitlement takes effect)—
 - (i) paragraph (4) is to be read as if after “Where an individual has previously received” and “the subsequent determination and the value of” there is inserted “Attendance Allowance or”, and
 - (ii) after paragraph (4) there is inserted—
 - “(5) Where paragraph (4) applies—
 - (a) section 64(1A) of the Social Security Contributions and Benefits Act 1992, and
 - (b) regulation 4(b) of these Regulations (entitlement to other benefits),
- do not apply in respect of the period between commencement of entitlement to Pension Age Disability Payment and cessation of entitlement to Attendance Allowance.”.

Appointees

13.—(1) A person appointed by the Secretary of State for Work and Pensions under regulation 33 of the Social Security (Claims and Payments) Regulations 1987⁽³⁾ to receive Attendance 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 85B of the 2018 Act⁽⁴⁾.

- (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 section 85B(3) of the 2018 Act),
 - (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

⁽³⁾ S.I. 1987/1968.

⁽⁴⁾ 2018 asp 9. Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

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- (c) if they have terminated an appointment in pursuance of head (b), appoint under section 85B of the 2018 Act another person to act on the transferring individual's behalf if they consider it appropriate to do so.

(3) The duty in sub-paragraph (2) does not apply where the Scottish Ministers have already appointed the person mentioned in sub-paragraph (1) to act on behalf of that transferring individual under section 85B of the 2018 Act.

Regulation 52

PART 4

Consequential amendment

14.—(1) The Social Security Contributions and Benefits Act 1992 is amended in accordance with paragraph (2).

(2) In section 70(2) (carer's allowance), after "child disability payment by virtue of entitlement to the care component at the middle or highest rate" insert "or pension age disability payment".

Regulation 53

PART 5

Miscellaneous amendments

15.—(1) The Disability Assistance for Children and Young People (Scotland) Regulations⁽⁵⁾ are amended as follows.

(2) In regulation 2 (interpretation - general) in the definition of "hospice" after paragraph (c) insert—

“(ca) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the health and Personal Services (Northern Ireland) Order 1991.”.

(3) In paragraph 1 of the schedule (entitlement to short-term assistance)—

(a) for sub-paragraph (1) substitute—

“(1) Subject to sub-paragraph (2) or (3), an individual who is, or was, entitled to Child 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 Child Disability Payment (“the earlier determination”) has been superseded by—

(i) a determination under section 37 (duty to make a determination) of the 2018 Act, or

(ii) if the earlier determination is a determination—

(aa) of an application for Child Disability Payment,

(bb) without application of an individual's entitlement to Child Disability Payment under paragraph 9 of this schedule (determination without application of entitlement to Child Disability Payment),

(5) S.S.I. 2021/174.

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- (cc) without application of an individual's entitlement to Child Disability Payment under regulation 35 (individuals in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before moving to Scotland),
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 Child 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 Child Disability Payment, or
 - (iv) is entitled to less Child Disability Payment than they were under the earlier determination,
 - (c) the individual's entitlement to Child Disability Payment is under review within the meaning of—
 - (i) paragraph 1(2) of schedule 10 of the 2018 Act, or
 - (ii) sub-paragraph (1A), and
 - (d) the individual—
 - (i) continues to meet the conditions as to residence and presence set out in regulations 5 to 9A, 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 36 (individuals in respect of whom Child Disability Payment is paid at the time of moving to another part of the United Kingdom).”,
- (b) in sub-paragraph (1A) for “(1)(b)(ii)” substitute “(1)(c)(ii)”,
 - (c) in sub-paragraph (1A)(a) for “subsequent determination of the individual's entitlement to Child Disability Payment mentioned in paragraph 1(1)(a)” substitute “individual's entitlement to Child 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”,
 - (d) in sub-paragraph (1C) for “the subsequent determination of the individual's entitlement to Child Disability Payment mentioned in sub-paragraph (1)(a)” substitute “the individuals' entitlement to Child Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i) relates”,
 - (e) in sub-paragraph (1C) for “subsequent determination” as it appears in the second instance substitute “individual's entitlement to Child Disability Payment for the period to which the determination mentioned in sub-paragraph (1)(a)(i) relates”,
 - (f) in sub-paragraphs (4)(a) to (e), after “Payment” insert “for the period to which the determination”,
 - (g) in sub-paragraphs (4)(a) and (c), after “(1)(a)” insert “(i) relates”,

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- (h) in sub-paragraphs (4)(b) and (d), for “the determination” as it appears in the first instance substitute “a determination”,
 - (i) in sub-paragraphs (4)(b), (d) and (e) after “(1)(a)” insert “(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates”,
 - (j) in sub-paragraph (4)(e), for “the subsequent” substitute “a” and for “make a determination of” substitute “make a decision about”,
 - (k) After sub-paragraph (5) insert—
 - “(6) In this part of the schedule “the earlier determination” has the meaning given in sub-paragraph (1)(a).”.
- (4) In paragraph 2 of the schedule (value and form) for sub-paragraph (1) substitute—
- “(1) The value of short-term assistance payable for any period is equal to V1-V2 where—
 - (a) V1 is the value of the Child Disability Payment the individual would have been given in respect of the period under the earlier determination had the earlier determination not been superseded, and
 - (b) V2 is the value of the Child Disability Payment that the individual is to be given in respect of the period under what is, at the time the individual becomes eligible for short-term assistance in respect of the period, the most recent determination of the individual’s entitlement to Child Disability Payment.”.
- (5) In paragraph 3 of the schedule (end of entitlement)—
- (a) in sub-paragraph (1)(c) omit “the subsequent determination of”,
 - (b) in sub-paragraphs (1)(c), (d) and (e),
 - (i) after “Payment” insert “for the period to which the determination”,
 - (ii) after “1(1)(a)” insert “(i) or the earlier determination mentioned in paragraph 1(1)(a)(ii) relates,
 - (c) in sub-paragraphs (1)(d) and (e), for “the subsequent” substitute “a”.
- 16.—**(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022(6) are amended as follows.
- (2) In regulation 28 (effect of admission to hospital on ongoing entitlement to Adult Disability Payment), in paragraph (4)(a)—
- (a) at the end of head (ii) omit “or”,
 - (b) after head (iii) insert—
 - “(iv) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991.”.
- (3) In regulation 29 (exception: hospices), after paragraph (2)(c) insert—
- “(ca) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991.”.
- (4) In paragraph 1 of schedule 2 (entitlement to short-term assistance)—
- (a) for sub-paragraph (1) substitute—

“(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(7),

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—

(i) continues to meet the conditions as to residence and presence set out in Part 5, or

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- (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).”,
- (b) in sub-paragraph (2) for “(1)(b)(ii)” substitute “(1)(c)(ii)”,
- (c) in sub-paragraph (2)(a) for “subsequent determination of the individual’s entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a)” substitute “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”,
- (d) in sub-paragraph (4)(a) after “(1)(a)” insert “(i)”,
- (e) in sub-paragraph (4)(b) for “subsequent determination referred to in sub-paragraph (1)(a)” substitute “determination mentioned in sub-paragraph (1)(a)(i)”,
- (f) in sub-paragraphs (7)(a) to (e), after “Payment” insert “for the period to which the determination”,
- (g) in sub-paragraphs (7)(a) and (c), after “(1)(a)” insert “(i) relates”,
- (h) in sub-paragraphs (7)(b) and (d), for “the determination” as it appears in the first instance substitute “a determination”
- (i) in sub-paragraphs (7)(b), (d) and (e), after “(1)(a)” insert “(i) or the earlier determination mentioned in sub-paragraph (1)(a)(ii) relates”,
- (j) in sub-paragraph (7)(e), for “the subsequent” substitute “a” and for “make a determination of” substitute “make a decision about”, and
- (k) after sub-paragraph (5) insert—
 - “(6) In this part of the schedule “the earlier determination” has the meaning given in sub-paragraph (1)(a).”.
- (5) In paragraph 2 of schedule 2 (value and form) for sub-paragraph (1) substitute—
 - “(1) The value of short-term assistance payable for any period is equal to V1-V2 where—
 - (a) V1 is the value of the Adult Disability Payment the individual would have been given in respect of the period under the earlier determination had the earlier determination not been superseded, and
 - (b) V2 is the value of the Adult Disability Payment that the individual is to be given in respect of the period under what is, at the time the individual becomes eligible for short-term assistance in respect of the period, the most recent determination of the individual’s entitlement to Adult Disability Payment.”.
- (6) In paragraph 3 of the schedule (end of entitlement)—
 - (a) in sub-paragraph (2)(c) omit “the subsequent determination of”,
 - (b) in sub-paragraphs (2)(c), (d) and (e),
 - (i) after “1(1)(a)” insert “(i) or the earlier determination mentioned in paragraph 1(1)(a)(ii) relates”, and
 - (ii) after “Payment” insert “for the period to which the determination”,
 - (c) in sub-paragraphs (2)(d) and (e), omit “subsequent”.