

SCHEDULE

PART 5

Miscellaneous amendments

16.—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022⁽¹⁾ 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that determination of the individual’s entitlement to Adult Disability Payment (“the earlier determination”) has been superseded by—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⁽²⁾,

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(2) S.S.I. 2022/217.

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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
 - (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—

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- “(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”.