

SCHEDULE

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⁽¹⁾, 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),

(1) 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⁽²⁾ 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⁽³⁾.

- (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

(2) [S.I. 1987/1968](#).

(3) [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.