

# **DRAFT REGULATIONS FOR CONSULTATION**

## **The Disability Assistance for Working Age People (Scotland) Regulations**

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(3), 31(2), 36(2), 41(4)(a), 43(5), 51, 52 and 95 of the Social Security (Scotland) Act 2018(a), and all other powers enabling them to do so.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security (“the Commission”) of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

They have laid a response to the Commission’s report on the proposals for the regulations before the Scottish Parliament in accordance with section 97(9)(a) of that Act.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1  
Introductory and Interpretation

**Citation and Commencement**

**1.**—(1) These Regulations may be cited as the Disability Assistance for Working Age People (Scotland) Regulations 2022 and come into force on [Spring 2021].

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(a) 2018 asp 9 (“the 2018 Act”). Schedules 5 and 10 of the 2018 Act, respectively make provision about the exercise of power under sections 31 and 36. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

## Interpretation

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“Adult Disability Payment” means disability assistance for adults given in accordance with these regulations,

“aid or appliance” —

(a) means any object or device which —

(i) is necessary for the individual to be able to perform an activity, and

(ii) improves, provides or replaces the individual’s impaired physical or mental function,

(b) can include an object or device which a person without a disability might choose to use for the same function,

(c) in relation to managing toilet needs includes, but is not limited to, the use of incontinence pads, and

(d) includes a prosthesis,

“armed forces independence payment” means the disability benefit paid in terms of article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011,

“assessment” means an assessment requested under section 54 of the 2018 Act, in accordance with section 55 of that Act,

“authorised provider of vehicles” means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers,

“award” means that a determination has been made that an individual is entitled to be given assistance under section 24 of the 2018 Act in accordance with these Regulations, and cognate expressions are to be construed accordingly,

“care home” means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010 and includes a residential educational establishment,

“Child Disability Payment” means child disability payment within the meaning of the Disability Assistance for Children and Young People (Scotland) Regulations 2021,

“daily living component” means the daily living component of Adult Disability Payment within the meaning of regulation 5,

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1,

“determination” or “determination of entitlement” has the meaning in section 25 of the 2018 Act,

“Disability Living Allowance” means disability living allowance under—

(a) section 71 of the Social Security Contributions and Benefits Act 1992, or

(b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995,

“needs” where used in relation to an item or function, means that it is reasonably required, though it may not have been available or provided,

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen) and references to a person receiving or submitting to medical treatment are to be construed accordingly,

“mobility component” means the mobility component of Adult Disability Payment within the meaning of regulation 6,

“Personal Independence Payment” —

(a) means personal independence payment under—

- (i) Part 4 of the Welfare Reform Act 2012, or
- (ii) article 82 of the Welfare Reform (Northern Ireland) Order 2015, and
- (b) includes a concessionary payment made in lieu of personal independence payment under regulation 27A(3) of the Personal Independence Payment (Transitional Provisions) Regulations 2013,

“relevant EU Regulation” means—

- (a) one of the following Regulations—
  - (i) Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
  - (ii) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, or
- (b) in relation to an individual to whom the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974 applies, a Regulation mentioned in paragraph (a) of this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018,

“residential educational establishment” means a care home which provides education or training except for one where the costs of any qualifying services are borne wholly or partly out of public or local funds by virtue of—

- (a) section 485 of the Education Act 1996 or section 14 of the Education Act 2002(which relate to grants in aid of educational services),
- (b) sections 49 or 73 of the Education (Scotland) Act 1980 (which relate respectively to the power of education authorities to assist persons to take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others),
- (c) section 65 of the Further and Higher Education Act 1992 (administration of funds by HEFCW), sections 39 or 40 of the Higher Education and Research Act 2017 (which relate respectively to financial support for registered higher education providers and certain institutions) or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005 (which relate respectively to the general duty of Scottish Ministers to provide support for funding of further education and the administration of funds), or
- (d) section 22 of the Teaching and Higher Education Act 1998 (new arrangements for giving financial support to students),

“relevant date” means the date under regulations 13 or, where applicable, regulation 14,

“previous award” means an award of either or both components of Adult Disability Payment to which an individual has ceased to be entitled,

“re-determined” means re-determined under section 43 of the 2018 Act, and “re-determination” is to be construed accordingly, and

“week” means a period of 7 days.

## PART 2

### Disability Assistance for Working Age People

#### Overview

**3.—(1)** An individual is entitled to Adult Disability Payment in accordance with these Regulations if they meet the eligibility rules in—

- (a) regulation 4 (entitlement to other benefits),
  - (b) regulations 15 to 21 (residence and presence conditions),
  - (c) regulation 22 (age criteria), and
  - (d) one or more of the following—
    - (i) regulation 5 (daily living component),
    - (ii) regulation 6 (mobility component),
    - (iii) regulation 26 (entitlement under special rules relating to terminal illness).
- (2) Adult Disability Payment is to consist of a daily living component and a mobility component.
- (3) There are 2 weekly rates of the daily living component and 2 weekly rates of the mobility component and those rates are specified in regulation 35 (amount and form of Adult Disability Payment).

**Entitlement to other benefits**

- 4.—(1) An individual is not entitled to Adult Disability Payment while they are entitled to—
- (a) Disability Living Allowance,
  - (b) Personal Independence Payment,
  - (c) Child Disability Payment, or
  - (d) armed forces independence payment.

**PART 3**

**Eligibility: Daily Living Component and Mobility Component**

**Daily Living Component**

- 5.—(1) An individual is entitled to the daily living component at the standard rate if—
- (a) the individual’s ability to carry out daily living activities is limited by the individual’s physical or mental health condition or conditions, and
  - (b) the individual meets the required period condition in accordance with regulation 11.
- (2) An individual is entitled to the daily living component at the enhanced rate if—
- (a) the individual’s ability to carry out daily living activities is severely limited by the individual’s physical or mental health condition or conditions, and
  - (b) the individual meets the required period condition in accordance with regulation 11.
- (3) For the purpose of these Regulations—
- (a) “daily living activities” are the activities set out in column 1 of the table in Part 2 of Schedule 1,
  - (b) “the standard rate” means the weekly rate of the daily living component prescribed in regulation 35(1)(a),
  - (c) “the enhanced rate” means the weekly rate of the daily living component prescribed in regulation 35(1)(b).
- (4) Whether a person has limited or severely limited ability to carry out daily living activities is to be determined in accordance with regulation 8 (scoring for daily living activities).

**Mobility Component**

- 6.—(1) An individual is entitled to the mobility component at the standard rate if—
- (a) the individual’s ability to carry out mobility activities is limited by the individual’s physical or mental health condition or conditions, and

- (b) the individual meets the required period condition in accordance with regulation 12.
- (2) A individual is entitled to the mobility component at the enhanced rate if—
  - (a) the individual’s ability to carry out mobility activities is severely limited by the individual’s physical or mental health condition or conditions, and
  - (b) the individual meets the required period condition in accordance with regulation 12.
- (3) For the purpose of these Regulations—
  - (a) “mobility activities” are the activities set out in column 1 of the table in Part 3 of Schedule 1,
  - (b) “the standard rate” means the weekly rate of the mobility component prescribed in regulation 35(2)(a),
  - (c) “the enhanced rate” means the weekly rate of the mobility component prescribed in regulation 35(2)(b).
- (4) Whether a person has limited or severely limited ability to carry out mobility activities is to be determined in accordance with regulation 9 (scoring for mobility activities).

**Determination of ability to carry out activities**

- 7.—(1) An individual’s ability to carry out an activity is to be determined—
  - (a) on the basis of the individual’s ability whilst wearing or using any aid or appliance which the individual normally wears or uses, or
  - (b) as if the individual were wearing or using any aid or appliance which the individual could reasonably be expected to wear or use.
- (2) Where an individual’s ability to carry out an activity is to be determined, they are to be determined to satisfy a descriptor on the basis of whether they can do so—
  - (a) safely,
  - (b) to an acceptable standard,
  - (c) repeatedly, and
  - (d) within a reasonable time period.
- (3) Where an individual has been determined as having severely limited ability to carry out activities, they are not to be treated as also having limited ability in relation to the same activities.
- (4) In this regulation —
  - (a) “safely” means in a manner unlikely to cause harm to the individual or to another person, either during or after completion of the activity, with consideration given to—
    - (i) the likelihood of harm, and
    - (ii) the severity of the consequences of that harm,
  - (b) “to an acceptable standard” means to a reasonable standard for the activity, taking account of the impact on the individual of carrying out the activity to that standard,
  - (c) “repeatedly” means as often as the activity being considered is reasonably required to be completed, and
  - (d) “reasonable time period” means no more than twice as long as the maximum period that an individual without a physical or mental health condition or conditions which limits that individual’s ability to carry out the activity in question would normally take to complete that activity.

**Scoring for daily living activities**

- 8.—(1)The score an individual obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 10.

(3) For the purposes of regulation 5, an individual has —

- (a) limited ability to carry out daily living activities where they obtain a score of at least 8 points and no more than 11 points in relation to daily living activities, and
- (b) severely limited ability to carry out daily living activities where they obtain a score of at least 12 points in relation to disability living activities.

### **Scoring for mobility activities**

**9.—**(1) The score an individual obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 10.

(3) For the purposes of regulation 6, an individual has —

- (a) limited ability to carry out mobility activities where they obtain a score of at least 8 points and no more than 11 points in relation to mobility activities, and
- (b) severely limited ability to carry out mobility activities where they obtain a score of at least 12 points in relation to mobility activities.

### **Scoring: further provision**

**10.—**(1) The score which applies to an individual in relation to each activity in the tables referred to in regulations 8(2) and 9(2) is—

- (a) where one descriptor is satisfied on over 50% of the days of the required period, the score which relates to that descriptor,
- (b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the score for the descriptor which scores the higher or highest number of points, and
- (c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period—
  - (i) the score which relates to the descriptor which is satisfied for the greater or greatest proportion of days of the required period, or
  - (ii) where both or all descriptors are satisfied for the same proportion, the score which relates to the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if—

- (a) the descriptor has been satisfied for any part of the day which is not minimal or fleeting, and
- (b) it is likely that, if the individual had been subject to a determination on that day, they would have satisfied that descriptor.

(3) In paragraphs (1) and (2), “required period” means—

- (a) in the case where entitlement to Adult Disability Payment falls to be determined, the period of 13 weeks ending with the relevant date together with—
  - (i) in relation to an application after an interval for the purpose of regulation 14 the period of 39 weeks beginning with the date on which that application is made,

- (ii) in relation to any other application, the period of 39 weeks beginning with the day after the relevant date.
- (b) in the case where Adult Disability Payment has been awarded to an individual—
  - (i) during the period of 13 weeks following a determination of entitlement under an application for the purpose of regulation 14, the period of 13 weeks ending with the relevant date together with, for each day of the award, the period of 39 weeks beginning with the day after that date,
  - (ii) in any other case, for each day of the award, the period of 13 weeks ending with that date together with the period of 39 weeks beginning with the day after that date.

## PART 4

### Required Period Condition

#### **Required Period Condition: daily living component**

**11.** An individual meets the required period condition for the purposes of regulation 5(1) (daily living component at the standard rate) or, as the case may be, regulation 5(2) (daily living component at the enhanced rate) where—

- (a) if the individual's entitlement to the daily living component had been determined every day in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited or, as the case may be, severely limited ability to carry out daily living activities, and
- (b) if the individual's entitlement to the daily living component were to be determined every day in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited or, as the case may be, severely limited ability to carry out daily living activities.

#### **Required Period Condition: mobility component**

**12.** An individual meets the required period condition for the purpose of regulation 6(1) (mobility component at the standard rate) or, as the case may be, regulation 6(2) (mobility component at the enhanced rate) where—

- (a) if the individual's entitlement to the mobility component had been determined every day in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined on all of those days that the individual had limited or, as the case may be, severely limited ability to carry out mobility activities, and
- (b) if the individual's entitlement to the mobility component were to be determined every day in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine on all of those days that the individual had limited or, as the case may be, severely limited ability to carry out mobility activities.

#### **The relevant date**

**13.** Except where paragraph (2) or (3) of regulation 14 applies, the relevant date is—

- (a) where the individual has made an application for Adult Disability Payment which has not been determined, the date of that application or, if later, the earliest date in relation to which, if the individual had been subject to a determination in relation to their ability to carry out daily living activities or, as the case may be, mobility activities, on every day in the previous 13 weeks, it is likely that the Scottish Ministers would have determined on all of those days that the individual has limited ability or, as the case may be, severely limited ability to carry out those activities, and

- (b) where the individual has an award of either or both components, any day of that award.

**The relevant date: Adult Disability Payment after an interval**

14.—(1) Paragraphs (2) and (3) apply where—

- (a) an individual makes an application for Adult Disability Payment (“the new application”),
- (b) that individual had a previous award of—
  - (i) Adult Disability Payment,
  - (ii) Disability Living Allowance, or
  - (iii) Personal Independence Payment,

which ended not more than 2 years before the date on which the new application is made,

- (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which the individual is entitled (or would be entitled if they met the required period condition) under the new application, and
- (d) the Scottish Ministers determine that the entitlement under the new application results from—
  - (i) substantially the same physical or mental health condition or conditions for which the previous award was made, or
  - (ii) a new physical or mental health condition or conditions which developed as a result of a condition for which the previous award was made.

(2) In relation to determination of entitlement under the new application—

- (a) the relevant date for the purposes of regulations 11(a) and 12(a) is the date on which the previous award ended, and
- (b) regulations 11(b) and 12(b) have effect in relation to the new application as if, for the words ‘the relevant date’ there were substituted ‘the date on which the new application for Adult Disability Payment is made’.

(3) Where an individual is awarded either or both components under the new application, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 13 weeks following the date of the new application—

- (a) the relevant date for the purposes of regulations 11(a) and 12(a) is the date on which the previous award ended, and
- (b) regulations 11(b) and 12(b) have effect in relation to that award as if, for the words ‘the relevant date’ there were substituted ‘each day of the award’.

(4) For the purposes of this regulation—

- (a) an award of Disability Living Allowance under paragraph 1(b)(ii) or Personal Independence Payment under paragraph (1)(b)(iii) is to be treated as though it were an award of Adult Disability Payment, and
- (b) that award may have been made whilst the person was ordinarily resident in—
  - (i) Scotland, or
  - (ii) any other part of the common travel area.

(5) This regulation is subject to regulation 24 (Adult Disability Payment after an interval and after reaching the relevant age).

## PART 5

### Residence and Presence Conditions

#### Residence and presence conditions

15.—(1) An individual satisfies the residence and presence conditions where on any day that individual—

- (a) is ordinarily resident in Scotland,
- (b) is habitually resident in the common travel area,
- (c) is not a person to whom section 115(9) of the Immigration and Asylum Act 1999 applies, within the meaning of section 115(3) of that Act for the purposes of entitlement to Adult Disability Payment,
- (d) is present in the common travel area, and
- (e) has been present in the common travel area for a period of, or for periods amounting in aggregate to, not less than 26 weeks out of the 52 weeks immediately preceding that day.

(2) In this part, “common travel area” has the meaning given in section 1(3) of the Immigration Act 1971.

(3) The residence condition set out in paragraph (1)(a) does not apply in relation to the daily living component where on any day the individual—

- (a) is habitually resident in Ireland,
- (b) has a genuine and sufficient link to Scotland, and
- (c) is an individual—
  - (i) to whom the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019, as modified from time to time in accordance with any provision of it, applies, and
  - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits.

(4) The reference in paragraph (3)(b) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (3) would be incompatible with the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019.

(5) The past presence condition in paragraph (1)(e) does not apply where an individual has a terminal illness within the meaning of regulation 26.

#### Temporary Absence from the common travel area

16.—(1) Where an individual is temporarily absent from the common travel area, they are treated as present in the common travel area for the purposes of regulation 15(1)(d) and (e) for—

- (a) the first 13 weeks of that absence for any reason, or
- (b) the first 26 weeks of that absence where—
  - (i) after the first 13 weeks, the absence is in connection with arrangements made for the medical treatment of the individual for a disease or bodily or mental disablement which commenced before leaving the United Kingdom, and
  - (ii) the arrangements relate to medical treatment—
    - (aa) outside the common travel area,
    - (bb) during the period when the individual is temporarily absent from the common travel area, and

- (cc) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (2) For the purposes of paragraph (1)—
  - (a) an individual is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks, and
  - (b) “medical treatment” means medical, surgical, psychological or rehabilitative treatment (including any course or diet regimen).
- (3) Where an individual—
  - (a) does not meet the condition set out in paragraph 1(a) or (b), and
  - (b) their absence from the common travel area does not exceed 52 weeks, the value of either component of Adult Disability Payment that is to be given to the individual is to be £0.
- (4) Where an individual—
  - (a) does not meet the presence condition set out in paragraph 15(1)(e) on the date the application is received by the Scottish Ministers, and
  - (b) appears to the Scottish Ministers likely to meet that condition, unless there is a change of circumstances, on a date no later than 13 weeks after the application was received,
 the Scottish Ministers may choose the date within that 13 week period on which the application is treated as being made.

#### **Serving members of Her Majesty’s forces, civil servants and their family members**

17.—(1) A relevant individual is treated as meeting the residence and presence conditions set out in regulations 15(1)(a), (1)(b) and (1)(d) where on any day that individual is outside the common travel area—

- (a) by reason of their capacity mentioned in paragraph (3)(a) provided that the individual satisfied the residence and presence conditions set out in paragraph 15(1)(a) (b) and (d) immediately prior to the start of their employment mentioned in paragraph (3)(a), or
  - (b) by reason of being a person mentioned in paragraph (3)(b) living with an individual to whom paragraph (3)(a) applies.
- (2) The past presence condition set out in regulation 15(1)(e) do not apply to a relevant individual.
- (3) A “relevant individual” in paragraph (1) and (2) means an individual who is—
- (a) outside the common travel area in their capacity as a—
    - (i) serving member of Her Majesty’s forces, or
    - (ii) civil servant, or
  - (b) living with a person mentioned in sub-paragraph (a) and—
    - (i) is the child, step child or child in care of that person,
    - (ii) is the parent, step-parent or parent-in-law of that person, or
    - (iii) is married to or in a civil partnership with that person, or is living together with that person as if they were married or in a civil partnership.
- (4) In this regulation—
- “child in care” means—
- (a) under the law of Scotland, a child in respect of whom a relevant individual listed in paragraph (3)(b)—
    - (i) is a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,
    - (ii) is a kinship carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,
    - (iii) has a kinship care order within the meaning of section 72 of the Children and Young People (Scotland) Act 2014, or

- (b) under the law of England and Wales and Northern Ireland, a child in respect of whom a person listed in paragraph (2)(b) has a relationship equivalent to those listed under the law of Scotland,

“civil partnership” is to be read as including a reference to marriage of a same sex couple and a reference to civil partners or to a person who is in a civil partnership is to be construed accordingly,

“civil servant” has the meaning given by section 1(4) of the Constitutional Reform and Governance Act 2010,

“person who is living with another person as if they were in a civil partnership” is to be read as including a reference to a person who is living with another person of the same sex as if they were married, and

“serving member of Her Majesty’s forces” means a member of a regular force or a reserve force (“M”) as defined, in each case, by section 374 (definitions applying for purposes of the whole Act) of the Armed Forces Act 2006, unless —

- (a) M is under the age of 16,
- (b) M is committing an offence under section 8 of the Armed Forces Act 2006 (desertion),
- (c) the force concerned is one of Her Majesty’s naval forces which M locally entered at an overseas base without—
  - (i) previously being an insured person under the National Insurance Act 1965, or
  - (ii) paying or having previously paid one or more of the following classes of contributions under the Social Security Act 1975 or the Social Security Contributions and Benefits Act 1992—
    - (aa) primary Class 1,
    - (bb) Class 2, or
    - (cc) Class 3, or
- (d) the force concerned is one of Her Majesty’s military forces or Her Majesty’s air forces which M entered, or was recruited for, outside the United Kingdom and—
  - (i) where that force is one of Her Majesty’s military forces, the depot for M’s unit is outside the United Kingdom, or
  - (ii) where that force is one of Her Majesty’s air forces, M is liable under the terms of M’s engagement to serve only in a specified area outside the United Kingdom.

### **Aircraft workers, mariners and continental shelf operations**

**18.—**(1) An individual is to be treated as meeting the presence conditions set out in regulation 15(1)(d) and (e) for any period where that individual is—

- (a) outside the common travel area in their capacity as an aircraft worker or a mariner, or
- (b) in employment prescribed for the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992 in connection with continental shelf operations.

(2) In this regulation—

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board an aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft, and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

- (c) but does not include a person so far as that employment is as a serving member of Her Majesty's forces, and
- “mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—
- (d) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel, and
  - (e) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,
  - (f) but does not include a person in so far as that employment is as a serving member of Her Majesty's forces.

**Persons residing in the United Kingdom to whom a relevant EU regulation applies**

19. The past presence condition set out in regulation 15(1)(e) does not apply where on any day the individual is—

- (a) ordinarily resident in Scotland,
- (b) habitually resident in the United Kingdom,
- (c) an individual—
  - (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
    - (aa) Title III of Part 2 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,
    - (bb) Part 3 or Article 23(4) of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”),
    - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or
    - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974,
  - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash.

**Persons residing outside the United Kingdom to whom a relevant EU regulation applies**

20.—(1) The residence and presence conditions set out in regulation 15(1) do not apply in relation to the daily living component where on any day the individual satisfies the conditions in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the individual must—

- (a) be an individual—
  - (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
    - (aa) Title III of Part 2 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,
    - (bb) Part 3 or Article 23(4) of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”),
    - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or

- (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974, and
- (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
- (b) be habitually resident in—
  - (i) Switzerland,
  - (ii) an EEA state, or
  - (iii) Gibraltar, and
- (c) have a genuine and sufficient link to Scotland.

(3) The reference in paragraph (2)(c) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in sub-paragraph (a)(i) of that paragraph.

(4) In this regulation—

“EEA State” means—

- (a) any member state of the European Union or
- (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time.

### **Refugees**

21.—(1) The past presence condition in regulation 15(1)(e) does not apply where an individual has—

- (a) been granted refugee status or humanitarian protection under the immigration rules, or
- (b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

(2) For the purposes of this regulation, “immigration rules” means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971.

## **PART 6**

### **Entitlement under rules relating to age**

#### **Age Criteria**

22.—(1) Adult Disability Payment may be paid in respect of an individual who is —

- (a) at least 16 years of age, and
- (b) has not reached the relevant age.

(2) In this part, “the relevant age” means pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995).

(3) Where an individual was born on 29 February, their birthday is to be taken to fall on 28 February in a year which is not a leap year.

(4) Paragraph (1)(b) is subject to the exceptions provided in regulations 23, 24 and 25.

#### **Persons of pensionable age: exceptions**

23. Regulation 22(1)(b) does not apply where the individual has reached the relevant age if they—

- (a) were entitled to an award of either or both components of Adult Disability Payment on the day preceding the day on which they reached the relevant age, or
- (b) made an application for Adult Disability Payment before reaching the relevant age and that application was not determined before they reached that age, but an award of either or both components would be made in respect of the individual but for regulation 22(1)(b).

**Adult Disability Payment after an interval and after reaching the relevant age**

**24.** Where an individual has reached the relevant age and makes a new application in the circumstances set out in regulation 14—

- (a) regulation 22(1)(b) does not apply,
- (b) the reference to ‘2 years’ in regulation 14(1)(b)(iv) is to be read as ‘1 year’,
- (c) where the individual is determined as having severely limited ability to carry out mobility activities for the purposes of the new application—
  - (i) the individual is entitled to the enhanced rate of the mobility component only if they were entitled to that rate of that component under the previous award, and
  - (ii) where the individual is not entitled to the enhanced rate of that component because of paragraph (2)(c)(i), they are entitled to the standard rate of that component provided that they were entitled to that rate of that component under the previous award, and
- (d) where the individual is determined as having limited ability to carry out mobility activities for the purposes of the new application, they are entitled to the standard rate of the mobility component only if they were entitled to that component, at either rate, under the previous award.

**Determination of an award after the person has reached the relevant age**

**25.—(1)** Subject to paragraph (4), regulation 22(1)(b) does not apply where—

- (a) the individual—
    - (i) has reached the relevant age, and
    - (ii) is entitled to an award (“the original award”) of the mobility component of Adult Disability Payment, pursuant to an exception in regulation 23 or 24, and
  - (b) the Scottish Ministers are under a duty to make a subsequent determination of their entitlement by way of a determination without an application under regulation 50(a).
- (2) The restrictions in paragraph (3) apply in relation to a determination under paragraph (1)(b) where—
- (a) the original award includes an award of the mobility component, and
  - (b) the determination is being made under regulation 50(a) in relation to a change of circumstances—
    - (i) which occurred after the person reached the relevant age, or
    - (ii) on the basis of medical evidence received from a healthcare professional or other person approved by the Scottish Ministers, where the Scottish Ministers become aware of the change of circumstances after the individual reached the relevant age.
- (3) The restrictions referred to in paragraph (2) are—
- (a) where the original mobility component award is for the standard rate 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 entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
  - (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but the individual had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the determination under paragraph (1)(b) or 2(c) takes or would take effect.

## PART 7

### Entitlement under special rules relating to terminal illness

#### **Entitlement under special rules relating to terminal illness**

- 26.—**(1) An individual who has a terminal illness is to be treated as satisfying the conditions for the enhanced rate of both the daily living component and the mobility component of Adult Disability Payment.
- (2) Paragraph (1) applies regardless of the period of time for which the individual has had the terminal illness.
- (3) Regulations 5 and 6 do not apply to a person to whom this regulation applies.
- (4) Subject to paragraphs (5) and (6), the individual’s entitlement to the rates referred to in paragraph (1) begins either on the date on which—
- (a) the individual’s application for Adult Disability Payment was made, where the application included information about the individual’s terminal illness,
  - (b) the Scottish Ministers became aware of the individual’s terminal illness (whether as a result of the individual notifying a change in circumstances or otherwise), where the individual was previously awarded, and has an ongoing entitlement to, Adult Disability Payment, on the basis of a determination that the individual was entitled to the daily living component or the mobility component or both in relation to a condition other than terminal illness, or
  - (c) the clinical judgement was made in accordance with paragraphs (7) and (8) (“the judgement”),
- whichever is the earlier.
- (5) Where the judgement mentioned in paragraph (4)(c) is dated not more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies (“the relevant date”), the Scottish Ministers have the power, when making their determination, to specify that an individual’s entitlement begins—
- (a) up to a maximum of 26 weeks prior to the relevant date, and
  - (b) on or after the day these Regulations come into force.
- (6) Where the judgement mentioned in paragraph (4)(c)—
- (a) is dated more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies (“the relevant date”), and
  - (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (7) and (8),
  - (c) an individual’s entitlement can only begin—
  - (d) up to a maximum of 26 weeks prior to the relevant date, and

(e) on or after the day these Regulations come into force.

(7) For the purposes of these regulations an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to Adult Disability Payment if it is the clinical judgement of an appropriate healthcare professional that the individual has a progressive disease that can reasonably be expected to cause the individual's death.

(8) Subject to paragraph (9), an appropriate healthcare professional exercising the judgement described in paragraph (7) must have regard to the guidance prepared and made publically available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(9) Where regulation 20 (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies to the individual, an appropriate healthcare professional mentioned in paragraph (10)(b) need not have regard to the guidance mentioned in paragraph (8) where it would not be reasonable in the circumstances to insist on the judgement being formed with regard to that guidance.

(10) In this regulation, "an appropriate healthcare professional" means—

- (a) a registered medical practitioner or a registered nurse who is—
  - (i) involved in the diagnosis or care of the individual, and
  - (ii) acting in their professional capacity, or
- (b) where regulation 20 applies to the individual, a person who—
  - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in an EEA state, Gibraltar or Switzerland,
  - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that EEA state, Gibraltar or Switzerland, and
  - (iii) meets the requirements of sub-paragraphs (a)(i) and (ii).

(11) Where an individual has received Adult Disability Payment for a period and a determination is subsequently made that the individual is entitled to Adult Disability Payment at an enhanced rate for that period under this regulation, any payment of Adult Disability Payment to be made for that period will be reduced by any Adult Disability Payment already paid to that individual for that period.

## PART 8

### Effect of time spent in care homes, hospital and legal detention

#### **Effect of admission to a care home on ongoing entitlement to daily living component**

**27.—**(1) This regulation applies where an individual who has an ongoing entitlement to the daily living component of Adult Disability Payment, becomes a resident of a care home.

(2) Subject to paragraphs (4) and (5) and regulation 29, on the day after the day on which the individual has been resident in a care home for 28 days, and for so long as the individual continues to reside in such a home, the value of the daily living component of Adult Disability Payment that is to be given to an individual is to be £0 instead of the values set out in regulation 35 (amount and form of Adult Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(4) Paragraph (2) does not apply to a resident in a care home, where the full costs of any qualifying services are met—

- (a) entirely out of the resources of the individual for whom the qualifying services are provided,

- (b) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
- (c) entirely out of the resources of another person (other than a local authority) or from a charity.

(5) For the purposes of this regulation, an individual is not resident in a care home during any period when the individual is being looked after by a local authority and—

- (a) has been placed temporarily in a private dwelling with a family, relative or some other suitable person while aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995 by virtue of being a child in need within the meaning of section 93(4)(a)(ii) (impairment of health), or 93(4)(a)(iii) (disability) of that Act, or
- (b) is accommodated in a care home outside the United Kingdom, where the costs of any qualifying services are met wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom).

(6) For the purposes of this regulation and regulation 32 (entitlement beginning while in alternative accommodation), reference to an individual being “looked after by a local authority” is to be construed, as the case may be, in accordance with—

- (a) section 17(6) of the Children (Scotland) Act 1995,
- (b) section 105(4) of the Children Act 1989, or
- (c) article 25 of the Children (Northern Ireland) Order 1995.

#### **Effect of admission to hospital on ongoing entitlement to Adult Disability Payment**

**28.**—(1) This regulation applies where an individual who is aged 18 years or older and has an ongoing entitlement to either component of Adult Disability Payment—

- (a) begins undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of paragraph (4).

(2) Subject to regulation 29, on the day after the day on which the individual has been an in-patient in a hospital or similar institution for 28 days, and for so long as the individual continues to be an in-patient in such an institution, the value of either component of Adult Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 35 (amount and form of Adult Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided there is no more than 28 days between each period.

(4) For the purposes of paragraph (1), the costs of treatment, accommodation or any related services are borne out of public funds if the individual is undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under—
  - (i) the National Health Service Act 2006,
  - (ii) the National Health Service (Wales) Act 2006, or
  - (iii) the National Health Service (Scotland) Act 1978, or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

(5) Where an individual was under the age of 18 on the day on which they began undergoing medical or other treatment as an in-patient at a hospital or similar institution, regulation 33 applies.

### **Exception: Hospices**

29.—(1) Regulations 27 and 28 do not apply where the individual is residing in a hospice and is terminally ill, and the Scottish Ministers have been informed that they are terminally ill—

- (a) on an application for Adult Disability Payment, or
- (b) by receipt of a clinical judgement.

(2) In this regulation, “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

- (a) a national health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978) in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006(a)) in England,
- (c) a hospital in Wales vested in—
  - (i) an NHS trust,
  - (ii) a Local Health Board, or
  - (iii) the Welsh Ministers,

for the purpose of functions under the National Health Service (Wales) Act 2006,

- (d) a hospital maintained or administered by the Defence Council, or
- (e) an institution similar to a hospital mentioned in any of the preceding paragraphs.

(3) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006, and

“Local Health Board” means a body established under section 11 of that Act.

### **Effect of legal detention on ongoing entitlement to Adult Disability Payment**

30.—(1) This regulation applies where an individual who has an ongoing entitlement to Adult Disability Payment begins a period of legal detention.

(2) This regulation does not apply where regulation 28 (effect of admission to hospital on ongoing entitlement to Adult Disability Payment) or regulation 33 (effect of reaching 18 years of age while in hospital) applies.

(3) On the day after the day on which the individual has been in legal detention for 28 days, and for as long as the individual continues to be in legal detention, instead of the values set out in regulation 35 (amount and form of Adult Disability Payment)—

- (a) where the individual is aged 18 or over when their legal detention begins, the value of either component of Adult Disability Payment that is to be given to the individual is to be £0, or
- (b) where the individual is aged 16 or 17 when their legal detention begins, the value of the daily living component of Adult Disability Payment that is to be given to the individual is to be £0.

(4) If, whilst they are in legal detention, an individual under paragraph (3)(b) reaches the age of 18, on and after that day, and for so long as the individual continues to be in legal detention, the individual is to be given the value of £0 in respect of either component of Adult Disability Payment.

(5) The 28 days referred to in paragraph (3) may comprise two or more separate periods, provided there is no more than one year between each period.

(6) For the purposes of paragraph (5)—

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- (a) “hospital or similar institution” means any place (not being a prison, a detention centre a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment,
  - (b) criminal proceedings against any person are deemed to be concluded upon that person being found in terms of section 53F of the Criminal Procedure (Scotland) Act 1995 to be unfit for trial.
- (7) Paragraph (2) of this regulation does not apply to an individual where—
- (a) the individual is undergoing legal detention outside the United Kingdom, and
  - (b) in similar circumstances in the United Kingdom, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

### **Calculation of periods of time spent in a care home, hospital or legal detention**

- 31.**—(1) Subject to paragraphs (3) to (6), a period during which an individual is
- (a) resident in a care home for the purpose of regulation 27,
  - (b) an in-patient in hospital or similar institution for the purposes of regulation 28, or
  - (c) in legal detention for the purpose of regulation 30,
- is to be determined in accordance with paragraph (2).
- (2) A period under paragraph (1) is to be taken to—
- (a) begin on the day after the day on which the individual enters the place under paragraph (1), and
  - (b) ends on the day before the day on which the individual leaves the place under paragraph (1).
- (3) Where an individual takes a period of leave from a place under paragraph (1), the days on which the individual begins and returns from leave, are not to be counted as days of residence in that place.
- (4) Days constituting a period of leave are not to be counted as days of residence in a place under paragraph (1).
- (5) Where, immediately following a period of residence for the purpose of paragraph (a), (b) or (c) of paragraph (1), the individual commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which the later period ends.
- (6) Where an individual enters a place under paragraph (1) as a result of transfer from another place under that paragraph, the day of transfer is to be counted as a day of residence in that place.

### **Entitlement beginning while in alternative accommodation**

- 32.**—(1) This regulation applies where an individual is resident in a care home, an in-patient in a hospital or similar institution, or in legal detention on the day on which their entitlement to Adult Disability Payment begins.
- (2) On and after that day, and for so long as the individual continues to reside in a place listed in paragraph (1), instead of the values set out in regulation 35 (amount and form of Adult Disability Payment), the individual is to be given the value of £0—
- (a) where they are resident in a care home, in respect of the daily living component of Adult Disability Payment,

- (b) where they are aged 18 or over and an in-patient in a hospital or similar institution when their entitlement to Adult Disability Payment begins, in respect of either component of Adult Disability Payment, or
- (c) where they are in legal detention and—
  - (i) aged 18 or over when their entitlement to Adult Disability Payment begins, in respect of either component of Adult Disability Payment,
  - (ii) aged 16 or 17 when their entitlement to Adult Disability Payment begins, in respect of the daily living component of Adult Disability Payment.

(3) If, whilst they are in legal detention, an individual under paragraph (2)(c)(ii) reaches the age of 18, on and after that day, and for so long as the individual continues to be in legal detention, the individual is to be given the value of £0 in respect of either component of Adult Disability Payment.

(4) Paragraphs (1) and (2) do not apply where the individual is—

- (a) an in-patient in a hospital or similar institution, and the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of regulation 28(5), or
- (b) a resident in a care home, and the full costs of any qualifying services are met—
  - (i) entirely out of the resources of the individual for whom the qualifying services are provided,
  - (ii) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
  - (iii) entirely out of the resources of another person (other than a local authority) or from a charity.

(5) For the purposes of this regulation, an individual is not resident in a care home during any period when the individual is being looked after by a local authority and—

- (a) has been placed temporarily in a private dwelling with a family, relative or some other suitable person while aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995 by virtue of being a child in need within the meaning of section 93(4)(a)(ii) (impairment of health), or 93(4)(a)(iii) (disability) of that Act, or
- (b) is accommodated in a care home outside the United Kingdom, where the costs of any qualifying services are met wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom).

### **Effect of reaching 18 years of age while in hospital**

**33.—**(1) Where an individual who is entitled to Adult Disability Payment—

- (a) was under the age of 18 on the day on which they entered a hospital or similar institution to begin undergoing medical or other treatment as an in-patient,
- (b) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of regulation 28(4). and
- (c) during that period as an in-patient, they reach the age of 18,

on the day that the individual reaches the age of 18, and for so long as the individual continues to be an in-patient in such an institution, the value of either component of Adult Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 35 (amount and form of Adult Disability Payment).

(2) Paragraph (1) applies regardless of whether the individual's entitlement to Adult Disability Payment began before they entered a hospital or similar institution, or once they were an in-patient.

## PART 9

### Making of applications and payments and duration of eligibility

#### Making Payments

**34.**—(1) Where Adult Disability Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person and pay it instead to another person.

#### Amount and form of Adult Disability Payment

**35.**—(1) The weekly rate of payment of the daily living component for the purposes of regulation 5 is, where the individual is entitled to (a)—

- (a) the standard rate, £60.00, or
- (b) the enhanced rate, £89.60.

(2) The weekly rates of the mobility component for the purposes of regulation 6 is, where the individual is entitled to—

- (a) the standard rate, £23.70, or
- (b) the enhanced rate, £62.55.

(3) Where an individual is entitled to payment of the daily living component or the mobility component for a period shorter than one week, payment of that component is to be made at one-seventh of the relevant weekly rate, for each day of entitlement.

(4) For any week where an individual is entitled to—

- (a) the daily living component of Adult Disability Payment, and
- (b) payment of an amount in respect of constant attendance under section 61 of the Social Security Act 1975,

the amount of the daily living component of Adult Disability Payment that is to be given to the individual is to be reduced by the amount paid under that section.

(5) For the purpose of calculating the amount of the daily living component that is to be given to the individual, in accordance with paragraph (3), where the amount in respect of constant attendance is equal to or greater than the amount of the daily living component of Adult Disability Payment, the value of the daily living component of Adult Disability Payment that is to be given to the individual is to be £0.

(6) For any week where an individual is entitled to—

- (a) the mobility component of Adult Disability Payment, and
- (b) payment of War Pensioners' Mobility Supplement within the meaning of
  - (i) the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (“1983 Order”),
  - (ii) the Personal Injuries (Civilians) Scheme 1983,
  - (iii) the 1983 Order by virtue of the War Pensions (Naval Auxiliary Personnel) Scheme 1964,

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(a) The rates specified here are correct at the time of drafting for this consultation, however they are updated annually and so will be adjusted for the latest figures at the time of coming into force.

- (iv) the Pensions (Polish Forces) Scheme 1964,
- (v) the War Pensions (Mercantile Marine) Scheme 1964, or
- (vi) an Order of Her Majesty in relation to the Home Guard dated 21 December 1964 or 22 December 1964, or in relation to the Ulster Defence Regiment dated 4 January 1971,

the amount of the mobility component of Adult Disability Payment that is to be given to the individual is to be £0.

(7) Adult Disability Payment is only to be given in the form of money, except as provided for by regulation 45 (Form of payment – giving Adult Disability Payment by way of deduction).

**When an application is to be treated as made and beginning of entitlement to assistance**

**36.**—(1) An application for Adult Disability Payment is to be treated as made—

- (a) on the day it is received by the Scottish Ministers, or
- (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).

(2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—

- (a) would not satisfy a requirement in—
  - (i) regulation 4 (entitlement to other benefits),
  - (ii) regulation 5 (daily living component),
  - (iii) regulation 6 (mobility component),
  - (iv) regulation 11 (required period condition: daily living component), or
  - (v) regulation 12 (required period condition: mobility component),
  - (vi) part 5 (residence and presence conditions), or
  - (vii) regulation 22 (age criteria),

if the application were treated as made on the day it was received, and

- (b) would likely be entitled to receive Adult Disability Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,

the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as made.

(3) Where, on the basis of an application, a determination is made that an individual is entitled to Adult Disability Payment, the date on which entitlement begins is to be identified in accordance with paragraphs (4) to (6).

(4) Where an application is made within 8 weeks of the day on which the full name and date of birth of an individual (“the required data”) is submitted by, or on behalf of, the individual to the Scottish Ministers for the purpose of an application for Adult Disability Payment, entitlement begins on whichever is the later of the day —

- (a) on which the required data was submitted, or
- (b) identified in accordance with paragraph (2).

(5) Subject to paragraph (6), where an application is made after the 8 week period described in paragraph (4), entitlement begins on the day on which the application is treated as made in accordance with paragraph (1).

(6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made after the 8 week period described in paragraph (4), they may treat the application as having been made within that period.

(7) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Adult Disability Payment—

- (a) under paragraph (1)(a)—
  - (i) begins on the day on which the application is treated as having been made, and
  - (ii) ends on the day on which the determination of entitlement is made, and
- (b) under paragraph (1)(b)—
  - (i) is deemed to begin on the day before the determination is made provided that the requirements are satisfied, and
  - (ii) ends on the day on which the determination is made.

### **Time of Payment**

37. Where an award of Adult Disability Payment is made, the Scottish Ministers are to pay assistance—

- (a) 4 weekly in arrears, or
- (b) where regulation 26 (entitlement under special rules relating to terminal illness) applies, weekly in advance.

### **Continuing Eligibility**

38.—(1) Subject to paragraphs (3) and (4), a determination that an individual is entitled to Adult Disability Payment in respect of a period is to be made on the basis that the individual has an ongoing entitlement to Adult Disability Payment after the end of that period, except where paragraph (2) applies.

(2) This paragraph applies where, after the end of the period mentioned in paragraph (1), the individual no longer satisfies the eligibility rules.

(3) A determination of ongoing entitlement is made on the basis that—

- (a) the individual will continue to be entitled to Adult Disability Payment for a fixed or indefinite period as specified in the notice of determination, and
- (b) the decision that the individual is entitled to Adult Disability Payment for each subsequent 4-week period is to be taken in accordance with these Regulations, on the strength of the assumptions set out in paragraph (4).

(4) The assumptions are that—

- (a) the individual continues to satisfy the eligibility criteria which were satisfied to be entitled to Adult Disability Payment under the determination mentioned in paragraph (1),
- (b) the information on which the determination mentioned in paragraph (1) was made still applies and is relevant in the individual's case, and
- (c) there is no change in circumstances of the individual which would require to be notified under section 56 (duty to notify change of circumstances) of the 2018 Act.

### **Circumstances in which assistance may be suspended**

39.—(1) The Scottish Ministers must have regard to an individual's financial circumstances prior to making a decision to suspend entitlement to one component or both components of Adult Disability Payment.

(2) An individual's Adult Disability Payment is to be suspended where—

- (a) under section 54(1A) of the 2018 Act the Scottish Ministers have issued a decision to suspend Adult Disability Payment to the individual due to a failure to provide information which the individual is yet to provide,
- (b) the Scottish Ministers have made arrangements (whether under 85A of the 2018 Act, 85B of the 2018 Act or otherwise) for a person to receive the Adult Disability Payment on the

individual's behalf, and the Scottish Ministers consider that it is necessary to suspend the Adult Disability Payment—

- (i) in order to protect the individual from the risk of financial abuse, or
  - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Adult Disability Payment,
- (c) the individual has requested that the Scottish Ministers temporarily stop giving the Adult Disability Payment and is yet to request that they resume doing so.

### **Right to review suspension**

**40.** An individual whose Adult Disability Payment has been suspended in accordance with regulation 39 may require the Scottish Ministers to review their decision to suspend that individual's Adult Disability Payment.

### **Information to be given following suspension**

**41.—**(1) Having made a decision to suspend an individual's Adult Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual's Adult Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual's right under regulation 40 to require the Scottish Ministers to review their decision to suspend the individual's Adult Disability Payment.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

### **Ending a suspension**

**42.** The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information mentioned in regulation 39(2)(a) and the Scottish Ministers consider that they do not require to make a determination without application
- (b) the Scottish Ministers make a determination without application under regulation 49 (consideration of entitlement after specified period), 50 (determination following change of circumstances, etc.), 51 (determination following official error – underpayments), 52 (determination following error – overpayments) or 53 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act,
- (d) the circumstances mentioned in regulation 39(2)(b) or (c) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual..

### **Effect of suspension ending**

**43.** When—

- (a) the suspension of an individual's Adult Disability Payment ends, and
- (b) under the latest determination of the individual's entitlement to Adult Disability Payment the individual would have become entitled to be given Adult Disability Payment during the period of the suspension,

the individual is immediately to be given the Adult Disability Payment that the individual would have become entitled to be given under the determination during that period.

### **Specified period**

44. The period specified under section 54(1) or (1B) of the 2018 Act is a period of at least 14 days from the date the request for information was sent to the individual.

### **Form of payment – giving Adult Disability Payment by way of deduction**

45.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual's payment of Adult Disability Payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual's agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purpose of sub-paragraph (1), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

### **When an increase in level of entitlement or payment takes effect**

46.—(1) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is increased or their entitlement to a component is awarded, the change takes effect—

- (a) in the case of an increase pursuant to a determination made under regulation 50(c) or 50(d) (determination following change of circumstances etc.) on the day after the day on which Personal Independence Payment ceased to be paid in respect of the individual,
- (b) in the case of an award of entitlement to a component or an increase pursuant to a determination made in accordance with regulation 50(a) as a result of the individual reporting a change that affects their eligibility under regulation 5 (daily living component) or regulation 6 (mobility component), on the date when—
  - (i) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component,
  - (ii) if the individual reports the change more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, or
  - (iii) in any other case, the Scottish Ministers make the determination.
- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 51 (determination following official error – underpayments) or on error within the meaning of regulation 52 (determination following error – overpayments), begins on the date when the earlier determination took effect, or
- (d) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph (1)(b), (c) or (d).

### **This regulation does not apply to an individual to whom regulation 26 (entitlement under special rules relating to terminal illness) applies. When a decrease or cessation in level of entitlement or payment takes effect**

47.—(1) Where, as a result of determination without an application, the amount of Adult Disability Payment payable in respect of an individual is decreased or their entitlement to a component is ceased, the change takes effect—

- (a) in the case of a decrease pursuant to a determination made under regulation 50(c) or 50(d) (determination following change of circumstances etc.) on the day after the day on which Personal Independence Payment ceased to be paid in respect of the individual,
  - (b) in the case of a determination without application under regulation 50(a), on the date when—
    - (i) if the individual knowing fails to notify a change that the individual was required to notify under section 56 of the 2018 Act, the individual should have notified the Scottish Ministers of the change,
    - (ii) in any other case, the Scottish Ministers make the determination,
  - (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 51 (determination following official error – underpayments) or on error within the meaning of regulation 52 (determination following error – overpayments), begins on the date when the earlier determination took effect,
  - (d) in any other case, on the date when the Scottish Ministers make the determination.
- (2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set a later date for the purposes of paragraph (1)(b), (c) or (d).

## PART 10

### Qualifications and Experience Necessary to Carry out Assessments

#### **Qualifications and experience necessary to carry out Assessments**

**48.**—(1) Where an assessment is necessary in order to determine whether an individual is entitled to receive Adult Disability Payment, this must be carried out by a suitably qualified person .

(2) A person is suitably qualified for the purposes of paragraph (1) if—

- (a) they have been employed for a cumulative period of at least two years post-qualification, in the provision to individuals of health care or social care services,
- (b) where the assessment will involve consideration of the individual’s mental health condition or conditions, their employment in the provision of health care or social care services under paragraph (2)(a) included the provision of health care or social care services to individuals with mental health conditions, and
- (c) where the assessment will involve consideration of the individual’s learning disability or disabilities their employment in the provision of health care or social care services under paragraph (2)(a) included the provision of health care or social care services to individuals with learning disabilities.

(3) In this regulation, “post-qualification” means the person has obtained a relevant health care or social care qualification recognised by the Scottish Qualifications Authority, or equivalent body in an EEA state, Gibraltar or Switzerland, in the direct provision to individuals of health care or social care services.

## PART 11

### Determination of entitlement to Adult Disability Payment without application

#### **Consideration of entitlement after specified period**

**49.** The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, after the end of the period specified (if any) in—

- (a) the individual's notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49, of the 2018 Act.

**Determination following change of circumstances etc.**

**50.**The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, where the individual has an ongoing entitlement to Adult Disability Payment and they become aware—

- (a) of a change of circumstances, whether or not notified by the individual in accordance with section 56 of the 2018 Act, which would possibly result in an alteration to the component or rate of Adult Disability Payment payable to the individual or which is likely to mean that the individual is no longer entitled to Adult Disability Payment,
- (b) that the individual has died,
- (c) of an alteration of the rate of award of Personal Independence Payment which the individual was entitled to immediately before the date of transfer to Adult Disability Payment in accordance with Part 3 of schedule 2 (transitional provisions) as a result of a decision made pursuant to—
  - (i) a revision under part 2 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Support Allowance (Decisions and Appeals) Regulations 2013,
  - (ii) a supersession under part 3 of those Regulations,
  - (iii) an appeal under section 12 of the Social Security Act 1998 ("the 1998 Act"),
  - (iv) a re-consideration under section 13 of the 1998 Act, or
  - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
  - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998("the 1998 Order"),
  - (vii) a supersession under article 11 of the 1998 Order,
  - (viii) an appeal under article 13 of the 1998 Order, or
  - (ix) an appeal to the Commissioner under article 15 of the 1998 Order.
- (d) of an alteration of the rate of award of Personal Independence Payment which the individual was entitled to immediately before moving to Scotland in circumstances in which regulation 57 (individuals in respect of whom Personal Independence Payment is paid in another part of the United Kingdom immediately before moving to Scotland) applies, as a result of a decision made pursuant to—
  - (i) a revision under part 2 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Support Allowance (Decisions and Appeals) Regulations 2013,
  - (ii) a supersession under part 3 of those Regulations,
  - (iii) an appeal under section 12 of the Social Security Act 1998 ("the 1998 Act"),
  - (iv) a re-consideration under section 13 of the 1998 Act,
  - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
  - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998("the 1998 Order"),
  - (vii) a supersession under article 11 of the 1998 Order,
  - (viii) an appeal under article 13 of the 1998 Order, or
  - (ix) an appeal to the Commissioner under article 15 of the 1998 Order.

### **Determination following official error – underpayments**

**51.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Adult Disability Payment (“the original determination”),
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
  - (i) not being given an award of Adult Disability Payment, or
  - (ii) being given a lower award than that,

to which the individual was entitled,

- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to the Payment, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers’ determination of the individual’s entitlement to Adult Disability Payment.

(2) In making a determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information
  - (i) provided in the application that led to the original determination,
  - (ii) any other information they have obtained in connection with that application, and
- (b) any other information they have obtained in connection with the individual’s entitlement to Adult Disability Payment.

(3) In this regulation, “official error” means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone else.

### **Determination following error – overpayments**

**52.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Adult Disability Payment (“the original determination”),
- (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
  - (i) an award of Adult Disability Payment to which the individual was not entitled, or
  - (ii) a higher award than that to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to the Payment, and
- (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the Scottish Ministers’ determination of the individual’s entitlement to Adult Disability Payment, that has not yet been determined.

(2) In making a determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information—
  - (i) provided in the application that led to the original determination, and
  - (ii) any other information they have obtained in connection with that application,
- (b) any other information they have obtained in connection with the individual’s entitlement to Adult Disability Payment, and
- (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Adult Disability Payment.

(3) In this regulation references to an “error” are to—

- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
  - (i) wrongly, or
  - (ii) correctly but on the basis of—
    - (aa) incorrect information, or
    - (bb) an assumption which proves to be wrong, or
- (b) a new determination having not been made, after an assumption on the basis of which an earlier determination was made has proven to be wrong.

**Determination to effect a deduction decision**

**53.**—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, where the circumstances in paragraphs (2) and (3) apply.

(2) This paragraph applies where—

- (a) regulation 45 (form of payment – giving Adult Disability Payment by way of deduction) allows Adult Disability Payment to be given to the individual by way of deduction, or
- (b) Adult Disability Payment is being given to the individual by way of deduction, and the Scottish Ministers consider that it may no longer be appropriate.

(3) This paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Adult Disability Payment to be given by way of deduction (including introducing a deduction, where the full amount of Adult Disability Payment was previously given as money),
- (b) vary any period for which the individual’s Adult Disability Payment is to be given by way of deduction, that may have been specified in a previous determination of the individual’s entitlement, or
- (c) cease making deductions, and instead give the individual’s Adult Disability Payment in the form of money.

(4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Adult Disability Payment by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Adult Disability Payment being given by way of deduction,
- (b) wishes the Scottish Ministers to increase the amount of their Adult Disability Payment that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Adult Disability Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in paragraph (3)(b).

**PART 12**

**Periods in respect of a re-determination request**

**Periods in respect of a re-determination request**

**54.**—(1) The period for requesting a re-determination of entitlement to Adult Disability Payment under section 41 of the 2018 Act (right to request re-determination) is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act (notice of determination), of the right to make the request.

(2) In relation to determining entitlement to Adult Disability Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers,
- (b) in a case where the request for a re-determination is received by the Scottish Ministers outwith the period prescribed in paragraph (1), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual in question has a good reason for not requesting a re-determination sooner, or
- (c) in a case where the request for re-determination is not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the Scottish Ministers or (as the case may be) the First-Tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

## PART 13

### Provision of vehicles

#### **Payment of mobility component to authorised providers of vehicles for individuals with disabilities**

**55.**—(1) Where—

- (a) an individual is entitled to the enhanced rate of the mobility component of Adult Disability Payment, and
- (b) the individual has entered into an agreement with an authorised provider of vehicles for persons with disabilities for the hire or hire-purchase of a vehicle,

the Scottish Ministers may, with the consent of the individual, pay that component (in whole or in part) to the provider to be used to meet, or contribute towards meeting, the individual's liability under the agreement.

(2) The Scottish Ministers must cease to make payments in accordance with paragraph (1) in the event that—

- (a) the agreement is brought to an end in accordance with the terms of the agreement, or
- (b) the individual withdraws their consent.

#### **Vehicles for persons with disabilities – powers of appointees**

**56.**—(1) Where a person (“an appointee”) is appointed by the Scottish Ministers under the 2018 Act to act on an individual's behalf in connection with the determination of the individual's entitlement to assistance under section 24 (duty to give assistance) of the 2018 Act, in addition to the powers conferred on the appointee by that Act the appointee can, on behalf of the individual—

- (a) enter into an agreement with an authorised provider of vehicle for the hire or hire-purchase of a vehicle,
- (b) terminate any such agreement,
- (c) for the purpose of regulation 55(1), give consent to the Scottish Ministers to pay (in whole or in part) the mobility component to which the individual is entitled to the provider, and
- (d) withdraw any such consent.

(2) An appointee may exercise the powers conferred by paragraphs (1)(b) and (d) whether the agreement was entered into, or the consent given, by the appointee or by any other person.

## PART 14

### Transfer from Child Disability Payment to Adult Disability Payment

[details to be included in a later draft]

## PART 15

### Movement of individuals between Scotland and the rest of the United Kingdom

#### **Individuals in respect of whom Personal Independence Payment is paid in another part of the United Kingdom immediately before moving to Scotland**

57.—(1) Where an individual—

- (a) is at least 16 years of age,
- (b) becomes ordinarily resident in Scotland,
- (c) was resident in another part of the United Kingdom, and
- (d) was entitled to Personal Independence Payment immediately before the date of the move,

the Scottish Ministers are to make a determination without application of the individual's entitlement to Adult Disability Payment.

(2) Entitlement to Adult Disability Payment under paragraph (1) begins on the day after the day on which the person's entitlement to Personal Independence Payment ends.

(3) In this regulation, "the date of the move" is the date when the individual becomes ordinarily resident in Scotland, as notified by the individual or otherwise communicated to the Scottish Ministers (whether the notification takes place before or after the date of the move).

#### **Individuals in respect of whom Adult Disability Payment is paid at the time of moving to another part of the United Kingdom**

58.—(1) Where the Scottish Ministers become aware that an individual who is entitled to Adult Disability Payment has moved or is to move to become resident in another part of the United Kingdom, the individual is to be treated as though the individual meets the condition under regulation 15(1)(a) of being ordinarily resident in Scotland for a period of 13 weeks beginning in accordance with paragraph (4).

(2) Subject to Part 8 (effect of time spent in care homes, hospital and legal detention), where the Scottish Ministers become aware that an individual has moved or is to move to another part of the United Kingdom under paragraph (1), they are to make a determination without application at the end of the 13 week period mentioned in paragraph (1) that the individual's entitlement to Adult Disability Payment is to terminate.

(3) Where before the end of the 13-week period, the Scottish Ministers become aware that the individual is no longer to move to become resident in another part of the United Kingdom, paragraph (1) and the duty in paragraph (2) do not apply.

(4) [The 13-week period mentioned in paragraph (1) begins—

- (a) if the Scottish Ministers become aware that the individual is to become resident in another part of the United Kingdom, on the date the individual ceases to be ordinarily resident in Scotland,
- (b) if the Scottish Ministers become aware after the date when the individual becomes resident in another part of the United Kingdom, but before they have been resident there for 13 weeks, on the date the individual notifies the Scottish Ministers of the move, or

- (c) in any other case, on the date that the individual ceases to be ordinarily resident in Scotland.
- (5) On the day after the 13 week period specified in paragraph (4) ends—
- (a) entitlement to Adult Disability Payment ceases , and
  - (b) regulation 52 (determination following error – overpayments) applies to any Adult Disability Payment paid to an individual in relation to a period after the end of that 13 week period.

## PART 16

### Initial Period for applications

#### **Initial Period for applications**

59. Part 2 of schedule 2 makes provision about the initial period for applications.

## PART 17

### Transfer to Adult Disability Payment

[details to be included in a later draft]

## PART 18

### Short-term assistance

#### **Entitlement to short-term assistance**

60. Part 1 of schedule 2 makes provision about short-term assistance.

## PART 19

### Transitory Provision

#### **Transitory provision – initial period for applications**

61.—(1) During the initial period for applications, in addition to meeting the residence and presence conditions in regulation 15, an individual must be resident in one of the local authority areas specified in paragraph 6 of Part 2 of schedule 2 on the date their application is received by the Scottish Ministers.

(2) In this regulation and in part 2 of schedule 2, “initial period for applications” means the period beginning with [date] and ending with [date].

#### **Exclusion to transitory provision**

62.—(1) An individual who has made a claim for Personal Independence Payment prior to [date] which has not yet been decided is not entitled to be paid Adult Disability Payment during the initial period for applications.

(2) In paragraph (1)(a) a claim for Personal Independence Payment is decided if it has—

- (a) been decided by the Secretary of State under section 8 (decisions by Secretary of State) of the Social Security Act 1998,
- (b) been withdrawn in accordance with regulation 5(2) of the Social Security (Claims and Payments) Regulations 1987, or
- (c) otherwise is no longer to be decided by the Secretary of State as mentioned in subparagraph (a).

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*July 2021*

## ADULT DISABILITY ASSISTANCE DETERMINATION

## PART 1

## Interpretation

1. In this schedule—

“aided” means with—

- (a) the use of an aid or appliance, or
- (b) supervision, prompting or assistance,

“assistance” means physical intervention by another person and does not include speech,

“assistance dog” means a dog trained to guide or assist a person with a sensory impairment,

“basic verbal information” means information in the individual’s native language conveyed verbally in a simple sentence and excludes information that is not communicated orally or received aurally,

“basic written information” means signs, symbols and dates written or printed in standard size text in the individual’s native language,

“bathe” includes get into or out of an unadapted bath or shower,

“communication support” means support from a person trained or experienced in communicating with people in general, or the individual in particular, with specific communication needs, including interpreting verbal information into a non-verbal form and vice versa,

“complex budgeting decisions” means decisions involving—

- (a) calculating household and personal budgets,
- (b) managing and paying bills, and
- (c) planning future purchases,

“complex verbal information” means information in the individual’s native language conveyed verbally in either more than one sentence or one complicated sentence and excludes information that is not communicated orally or received aurally,

“complex written information” means more than one sentence of written or printed standard size text in the individual’s native language,

“cook” means heat food at or above waist height,

“dress” includes put on socks and shoes,

“engage socially” means—

- (a) interact with others in a contextually and socially appropriate manner,
- (b) understand body language, and
- (c) establish relationships,

“follow the route of a journey” means for an individual to navigate and make their way along a planned route to a planned destination,

“manage incontinence” means manage involuntary evacuation of the bowel or bladder, including using a collecting device or self-catheterisation, and clean oneself afterwards,

“manage medication” means take medication which either improves the individual’s symptoms or health, or, where failure to do so is likely to result in a deterioration in the individual’s health,

“manage therapy” means undertake therapy which either improves the individual’s symptoms or health, or, where a failure to do so is likely to result in a deterioration in the individual’s health,

“medication” means medication to be taken at home which is prescribed or recommended by a—

- (a) registered—
  - (i) medical practitioner,
  - (ii) nurse,
  - (iii) pharmacist, or
- (b) health professional who is registered by the Health Professions Council,

“monitor a health condition” means—

(a) detect significant changes in the individual’s health condition which are likely to lead to a deterioration in the individual’s health, and

(b) take action advised by a—

- (i) registered medical practitioner,
- (ii) registered nurse, or
- (iii) health professional who is registered by the Health Professions Council,

without which the individual’s health is likely to deteriorate,

“orientation aid” means a specialist aid designed to assist disabled people to follow a route safely,

“prepare”, in the context of food, means make food ready for cooking or eating,

“prompting” means reminding, encouraging or explaining by another person,

“psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment,

“read” includes read signs, symbols and words but does not include read Braille,

“simple budgeting decisions” means decisions involving—

- (a) calculating the cost of goods, and
- (b) calculating change required after a purchase,

“simple meal” means a cooked one-course meal for one using fresh ingredients,

“social support” means support from a person trained or experienced in assisting people in general, or the individual in particular, to engage in social situations,

“stand” means stand upright with at least one biological foot on the ground,

“supervision” means the continuous presence of another person for the purpose of ensuring an individual’s safety,

“take nutrition” means—

(a) cut food into pieces, convey food and drink to one’s mouth and chew and swallow food and drink, or

(b) ingest nutrition by using a therapeutic source,

“therapeutic source” means parenteral or enteral tube feeding, using a rate-limiting device such as a delivery system or feed pump,

“therapy” means therapy to be undertaken at home which is prescribed or recommended by a—

- (a) registered—
  - (i) medical practitioner,
  - (ii) nurse, or
  - (iii) pharmacist, or

(b) health professional regulated by Health Professions Council, but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means), or any action which, in the individual's case, falls within the definition of "monitor a health condition",

"toilet needs" means—

- (a) getting on and off an unadapted toilet,
- (b) evacuating the bladder and bowel, and
- (c) cleaning oneself afterwards,

"unaided" means without—

- (a) the use or aid of an appliance, or
- (b) supervision, prompting or assistance,

"undress" includes take off socks and shoes.

## PART 2

### Daily Living Activities

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Preparing food.	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition.	a. Can take nutrition unaided.	0
	b. Needs—	2
	(i) to use an aid or appliance to be able to take nutrition, or	
	(ii) supervision to be able to take nutrition, or	
	(iii) assistance to be able to cut up food.	
c. Needs a therapeutic source to be able to take nutrition.	2	
d. Needs prompting to be able to take nutrition.	4	
e. Needs assistance to be able to manage a therapeutic source	6	

	to take nutrition	
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either—	0
	(i) does not receive medication or therapy or need to monitor a health condition, or	
	(ii) can manage medication or therapy or monitor a health condition unaided.	
	b. Needs any one or more of the following—	1
	(i) to use an aid or appliance to be able to manage medication,	
	(ii) supervision, prompting or assistance to be able to manage medication,	
	(iii) supervision, prompting or assistance to be able to monitor a health condition.	
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing.	a. Can wash and bathe unaided.	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of an unadapted bath or shower.	3
	f. Needs assistance to be able	4

	to wash their body between the shoulders and waist.	
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence	a. Can manage toilet needs or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2
	d. Needs assistance to be able to manage toilet needs.	4
	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8
6. Dressing and undressing.	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either—	2
	(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed, or	
	(ii) prompting or assistance to be able to select appropriate clothing.	
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally.	a. Can express and understand basic and complex verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8

	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
9. Engaging socially with other people face to face.	a. Can engage socially with other people unaided.	0
	b. Needs prompting to be able to engage socially with other people.	2
	c. Needs social support to be able to engage socially with other people.	4
	d. Cannot engage socially with other people due to such engagement causing either— (i) overwhelming psychological distress to the individual, or (ii) the individual to exhibit behaviour which would result in substantial risk of harm to the individual or another person.	8
10. Making budgeting decisions.	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

## PART 3

### Mobility Activities

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs the presence or prompting of another person to be able to undertake any journey to avoid overwhelming psychological distress to the individual.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journeys at all because it would cause overwhelming psychological distress to the individual .	10
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres either aided or unaided.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres, either aided or unaided.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided, — (i) stand, or (ii) move more than 1 metre.	12

## SCHEDULE 2

### PART 1

Regulation 60

#### Short-term assistance

##### Entitlement to short-term assistance

1.—(1) Subject to sub-paragraph (2), an individual who is, or was, entitled to Adult Disability Payment under a determination made on the basis that the individual has ongoing entitlement is entitled to short-term assistance where—

- (a) a determination of the individual's entitlement to Adult Disability Payment ("earlier determination" has been superseded by a subsequent determination ("subsequent determination") which has the effect that the individual is—
  - (i) no longer entitled to Adult Disability Payment, or
  - (ii) entitled to a lower amount of Adult Disability Payment,
- (b) the individual's entitlement to Adult Disability Payment is under review—
  - (i) within the meaning of paragraph 1(2) of schedule 10 of the 2018 Act, or
  - (ii) within the meaning of sub-paragraph (2), and
- (c) 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 58(4) (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 (1)(b)(ii) if—

- (a) a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a) is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014 ("the 2014 Act") (review of decisions), and
- (b) 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 an individual's entitlement to Adult Disability Payment is set aside after a review in terms of sub-paragraph (2)(a), the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

(4) 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 50(b) (determination following change of circumstances etc.).

(5) 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(2)(a) or (b) (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.

(6) 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 mentioned in sub-paragraph (1)(a), 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 the determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), 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 mentioned in sub-paragraph (1)(a), 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 the determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), 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 the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in sub-paragraph (1)(a), 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 determination of the individual's entitlement to Adult Disability Payment under section 49 of the 2018 Act, on the day that the decision is set aside.

**Value and form**

2.—(1) The value of short-term assistance payable is to be the difference between the amount of Adult Disability Payment to which the individual was paid under the earlier determination mentioned in paragraph 1(1)(a), and the amount of Adult Disability Payment the individual is paid under the subsequent determination mentioned in paragraph 1(1)(a).

(2) The form in which the short term assistance is to be given is to be the same as the form in which Adult Disability Payment was given under the earlier determination.

(3) Where the mobility component was being paid by the Scottish Ministers to an authorised provider of vehicles for persons with disabilities in accordance with regulation 55(1) (payment of mobility component to authorised provider of vehicles for individuals with disabilities) on the day before an individual's entitlement to the mobility component ended as a result of a subsequent determination mentioned in paragraph 1(1)(a)—

- (a) the amount of short-term assistance that is payable in respect of the mobility component may be paid by the Scottish Ministers to the authorised provider, and
- (b) paragraphs (1) and (2) of regulation 55 apply to the payment of short-term assistance as they had applied to the payment of mobility component prior to the individual's entitlement ending.

(4) Regulations 45 (form of payment - giving Adult Disability Payment by way of deduction), 51 (determination following official error - underpayments), 52 (determination following error - overpayments) and 53 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Adult 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—

- (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 Adult 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 subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a),
- (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 subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a), or
- (e) where the individual withdraws their application to bring an appeal against the subsequent determination of the individual's entitlement to Adult Disability Payment mentioned in paragraph 1(1)(a), on that day.

#### **Reduction of payment of Adult 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 that individual is entitled to Adult Disability Payment at the same rate or at a higher rate for that period, any payment of Adult Disability Payment to be made for that period is to be reduced by any short-term assistance and any Adult Disability Payment already paid to that individual for that period.

## **PART 2**

Regulation 59

### **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 they make an application for Adult Disability Payment during the initial period for applications.

(2) An individual who is awarded Adult 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 are—

- (a) on and after [date], Area A,
- (b) on and after [date], Area A and Area B,
- (c) on and after [date] Area A, Area B and Area C.

## **PART 3**

Regulation 2

### **Transfer to Adult Disability Payment**

[to be included in a later draft]

