

Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2020 No.

SOCIAL SECURITY

**The Disability Assistance for Children and Young People
(Scotland) Regulations 2020**

Made - - - - 2020

Coming into force - - 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 31(2), 36(2), 41(4)(a), 43(5), 51 and 52 and schedules 4, 5 and 10 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, the Scottish Ministers have consulted the Scottish Commission on Social Security.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Disability Assistance for Children and Young People (Scotland) Regulations 2020 and come into force on X X 2020.

Interpretation

2. In these Regulations—

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

“applicant” means a person who applies for disability assistance in respect of a child,

“bodily function” means the normal action of any organ of the body, including the brain, or of a number of organs acting together,

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

“child” means a person who has not yet reached the age of 16 years,

(a) 2018 asp 9. [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). These Regulations are subject to the affirmative procedure by virtue of section 33(2) of that Act].

“DAWAP” means Disability Assistance for Working Age People paid in accordance with Regulations made under section 31 of the 2018 Act,

“determination” or “determination of entitlement” means a determination of an individual’s entitlement to assistance under section 37 of the 2018 Act,

“Disability Living Allowance” means the disability benefit paid in accordance with section 71 of the Social Security Contributions and Benefits Act 1992(a),

“residential educational establishment” means a school which also provides accommodation, board and, where required, personal care,

“health care” means services provided for or in connection with the prevention, diagnosis or treatment of illness,

“hospice” means premises used for the purpose of caring for the dying or incurably ill,

“recipient” means the person to whom disability assistance is paid,

“social care” means services provided to assist with personal care, including assistance with washing and dressing, provision of meals and administration of medication,

“young person” means a person who—

- (a) is aged 16, or 17, or
- (b) is aged 18 and is awaiting completion of transfer to DAWAP, regardless of whether the person is receiving education.

PART 2

Disability assistance for children and young people

3.—(1) There is a type of disability assistance to be known as [*insert name*] (“disability assistance”).

(2) These Regulations prescribe—

- (a) the eligibility rules that are to be applied to determine whether an individual is entitled to disability assistance, and
- (b) what disability assistance an individual who is entitled to it is to be paid.

(3) Disability assistance is to consist of a care component and a mobility component.

(4) An individual’s entitlement to disability assistance may be an entitlement to either component or to both of them.

(5) An individual is not entitled to disability assistance unless he or she satisfies the residence and presence conditions.

PART 3

Eligibility

Residence and presence conditions

4.—(1) An individual satisfies the residence and presence conditions if that individual, on the day the application is treated as having been made—

- (a) is ordinarily resident in Scotland,
- (b) is habitually resident—

(a) 1992 c.4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).

- (i) in the United Kingdom,
 - (ii) in the Channel Islands,
 - (iii) in the European Economic Area, or
 - (iv) in Switzerland,
- (c) is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999^(a), or the application of section 115 is excluded by regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000^(b), and
- (d) meets the presence condition.
- (2) The presence condition is met in the following circumstances—
- (a) where the individual is under the age of 6 months, the individual has been present in the United Kingdom for a period of at least 13 weeks, or for periods amounting in aggregate to at least 13 weeks,
 - (b) where the individual is aged 6 months or more but not yet 3 years old, the individual has been present in the United Kingdom for at least 26 weeks, or for periods amounting in aggregate to at least 26 weeks,
 - (c) where the individual is aged 3 years or more, the individual has been present in the United Kingdom for at least 104 (or for periods, amounting in aggregate, to at least 104) of the 156 weeks immediately preceding,
- (3) For the purposes of paragraph (2), an individual is to be treated as present in the United Kingdom on a particular day if that individual is absent from the United Kingdom on that day because that individual—
- (a) is outside the United Kingdom in his or her capacity as—
 - (i) a serving member of the forces, or
 - (ii) an airman or mariner,
 - (b) is living with a person mentioned in sub-paragraph (a)(i), and is the spouse, civil partner, son, daughter, step-son or step-daughter of that person,
 - (c) is in employment prescribed for the purposes of section 120 of the Social Security Contributions and Benefits Act 1992 in connection with continental shelf operations, or
 - (d) is temporarily absent and that absence has not lasted for a continuous period of more than 13 weeks.
- (3A) For the purposes of paragraph (3)-
- (a) “serving member of the forces” means a person, other than one mentioned in sub-paragraph (b), who is a member of any of the following establishments or organisations (being a member who gives full pay service) but does not include any such person while absent on desertion—
 - (i) any of the regular naval, military or air forces of the Crown,
 - (ii) Royal Fleet Reserve,
 - (iii) Royal Naval Reserve,
 - (iv) Royal Marines Reserve,
 - (v) Army Reserve,
 - (vi) Territorial Army,
 - (vii) Royal Air Force Reserve,
 - (viii) Royal Auxiliary Reserve,

(a) 1999, c33.
 (b) S.I. 2000/636.

- (ix) the Royal Irish Regiment (to the extent that its members are not members of the regular naval, military or air forces of the Crown),
- (b) “serving member of the forces” is not be taken to consist of any of the establishments or organisations specified in sub-paragraph (a) by virtue only of the employment in such establishment or organisation of the following persons—
 - (i) any person who is serving as a member of any naval force of Her Majesty’s forces and who (not having been an insured person under the National Insurance Act 1965(a) and not being a contributor under the Social Security Act 1975(b) or the Act) locally entered that force at an overseas base,
 - (ii) any person who is serving as a member of any military force of Her Majesty’s forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom,
 - (iii) any person who is serving as a member of any air force of Her Majesty’s forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of his engagement to serve only in a specified part of the world outside the United Kingdom,
- (c) “airman” 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 any aircraft where—
 - (i) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried on that aircraft; and
 - (ii) 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,
 but does not include a person in so far as his or her employment is as a serving member of the forces,
- (d) “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—
 - (i) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
 - (ii) 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 her voyage;
 but does not include a person in so far as his employment is as a serving member of the forces.

(4) Where an individual is temporarily absent from the United Kingdom, the individual is to be treated for the purposes of paragraph (3)(d) as present in the United Kingdom for the first 26 weeks of that absence where—

- (a) the absence is solely 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,
- (b) the arrangements relate to medical treatment—
 - (i) outside the United Kingdom,
 - (ii) during the period when the individual is temporarily absent from the United Kingdom, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and

(a) 1965, c. 51.
 (b) 1975, c.14.

“medical treatment” means medical, surgical, psychological or rehabilitative treatment, and references to an individual receiving or submitting to medical treatment are to be read accordingly.

(5) For the purposes of paragraph (3)(d) and (4) an individual is “temporarily absent” if, at the beginning of the period of absence, that absence is not expected to exceed 52 weeks.

(6) The presence requirement in paragraph (1)(d) does not apply where an individual—

- (a) has a terminal illness within the meaning of regulation 11, or
- (b) has—
 - (i) been granted refugee status or humanitarian protection under the immigration rules, or
 - (ii) 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.

(7) For the purposes of paragraph (6)(b) “immigration rules” means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971(a).

(8) Regulation 3(5) does not apply where on any day—

- (a) the individual is habitually resident in the United Kingdom,
- (b) a relevant EU Regulation applies, and
- (c) the individual can demonstrate a genuine and sufficient link to the Scottish social security system.

(9) For the purpose of paragraph (8)(b) and paragraph (10)(b), each of the following is a relevant EU Regulation—

- (i) Council Regulation (EC) No 1408/71 of 14 June 1971(b) 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(c).

(10) Regulation 3(5) does not apply in relation to the care component where on any day—

- (a) the individual is habitually resident in—
 - (i) an EEA state, or
 - (ii) Switzerland,
- (b) a relevant EU Regulation applies; and
- (c) the individual can demonstrate a genuine and sufficient link to the Scottish social security system.

Care component criteria

5.—(1) Subject to the provisions of these Regulations, an individual is entitled to the care component of disability assistance for any period throughout which one of the following conditions is satisfied—

- (a) the individual is so severely disabled physically or mentally as to require in connection with his or her bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods),
- (b) the individual is so severely disabled physically or mentally as to require by day, from another person—

(a) 1971, c. 77.

(b) OJ L 149, 05.07.1971, p.2 (OJ/SE 1st Series vol 2, p.416).

(c) OJ L 166, 30.04.2004, p.1

- (i) frequent attention throughout the day in connection with his or her bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to the individual or others; or
- (c) the individual is so severely disabled physically or mentally as to require, at night—
 - (i) prolonged or repeated attention in connection with his or her bodily functions from another person, or
 - (ii) another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over the individual in order to avoid substantial danger to the individual or others.
- (2) No condition mentioned in paragraph (1) is to be taken to be satisfied unless—
 - (a) the individual has requirements of a description mentioned in the condition substantially in excess of the normal requirements of persons of his or her age, or
 - (b) the individual has substantial requirements of such a description which younger persons in normal physical and mental health may also have but which persons of the individual's age and in normal physical and mental health would not have.
- (3) Subject to the following provisions of this regulation, an individual is not entitled to the care component unless—
 - (a) throughout the period of 3 months immediately preceding the date on which the award of that component would begin, the individual has satisfied or is likely to satisfy one of the conditions mentioned in paragraph (1), and
 - (b) the individual is likely to continue to satisfy one of those conditions throughout—
 - (i) the period of 6 months beginning with that date, or
 - (ii) (if death is expected within the period of 6 months beginning with that date) the period so beginning and ending with death.
- (3A) In the case of an individual who is under the age of 16 on the date on which the award of the care component would begin, paragraph (3) only applies in relation to so much of any period mentioned in that paragraph as falls before the day on which the individual reaches the age of 16.
- (4) There are three weekly rates of the care component, and these are specified in regulation 37.
- (5) The weekly rate of the care component payable to an individual for each week in the period for which he or she is awarded that component is—
 - (a) the highest rate, if the individual falls within paragraph (3) by virtue of having satisfied or being likely to satisfy both the conditions mentioned in paragraph (1)(b) and (c) above throughout both the period mentioned in paragraph (3)(a) and that mentioned in paragraph (3)(b),
 - (b) the middle rate, if the individual falls within paragraph (3) by virtue of having satisfied or being likely to satisfy one of those conditions throughout both those periods, and
 - (c) the lowest rate in any other case.
- (6) For the purposes of this regulation, an individual who is terminally ill as defined in regulation 11, and makes a claim expressly on the ground of being such an individual, is to be taken (notwithstanding paragraph (2)(b))—
 - (a) to have satisfied the conditions mentioned in paragraph (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he or she is terminally ill (so however that the care component is not payable by virtue of this paragraph for any period preceding that date), and
 - (b) to satisfy or to be likely to satisfy those conditions for so much of the period for which he or she is terminally ill as does not fall before the date of the claim.

Mobility requirements: lower rate mobility component

6.—(1) An individual is entitled to the lower rate of the mobility component if that individual, though able to walk, cannot move around outdoors without having guidance or supervision from another person most of the time.

(2) The guidance or supervision required must be substantially greater than would typically be expected of a person of that age.

(3) In considering entitlement under paragraph (1), no account is to be taken of any ability which the individual has to use routes with which they are familiar, without guidance or supervision from another person.

Mobility requirements: higher rate mobility component

7.—(1) An individual is entitled to the higher rate of the mobility component of disability assistance if the individual satisfies at least one of the conditions in paragraph (2) and, as a result, requires substantially more guidance or supervision from another person than would typically be expected of a person of that age.

(2) The conditions in paragraph (1) are—

- (a) the individual is unable to walk as a result of a physical impairment,
- (b) the individual is virtually unable to walk as a result of a physical impairment, taking account of speed, manner of walking, ability to cover distance, including the distance that can be walked without beginning to experience significant discomfort, and any other factors relevant to how the individual moves when outdoors,
- (c) the exertion required to walk would lead to a danger to the individual's life, or to a serious deterioration in the individual's health, from which there would no recovery, or from which recovery would take a significant period of time,
- (d) the individual is entitled to the highest rate care component of disability assistance and has a mental impairment, accompanied by significant behavioural difficulties arising from the impairment.
- (e) the individual has no legs or no feet (regardless of the use of artificial limbs),
- (f) the individual is blind or has a severe visual impairment,
- (g) the individual has a severe mental impairment,
- (h) the individual has severe behavioural difficulties.

(3) An individual is not to be taken to be unable or virtually unable to walk where the individual—

- (a) is not unable or virtually unable to walk with the use of an artificial limb or artificial aid which the individual normally wears or uses, or
- (b) would not be unable or virtually unable to walk if the individual wore or used an artificial limb or artificial aid which is suitable to the individual's circumstances.

(4) An individual is to be taken to have a severe visual impairment, for the purposes of paragraph (2)(f), if the individual—

- (a) has visual acuity, with appropriate corrective lenses if necessary, of less than 3/60, or
- (b) has visual acuity, with appropriate corrective lenses if necessary, of 3/60 or more, but less than 6/60, a complete loss of peripheral visual field and a central visual field of no more than 10 [degrees sign] in total.

(5) An individual is to be taken to be blind, for the purposes of paragraph (2)(f), if the degree of disablement arising from the loss of vision amounts to 100 per cent.

(6) An individual is to be taken to have a severe mental impairment, for the purposes of paragraph (2)(g), if the individual has a significantly impaired capacity for judgement because of suffering from—

- (a) a state of arrested development as a result of a failure of the individual's brain to grow in the way normally expected, or
- (b) a deficiency in the functionality of the brain as a result of its incomplete physical development.

(7) An individual is to be taken to have severe behavioural difficulties, for the purposes of paragraph (2)(h), if the individual exhibits disruptive behaviour which—

- (a) is extreme,
- (b) regularly requires another person to intervene and physically restrain them in order to prevent physical injury to the individual themselves or another person or damage to property, and
- (c) is so unpredictable that another person requires to be awake and watching over the individual while they are awake.

(8) In this regulation—

- (a) references to visual acuity mean the combined clarity of vision of both eyes, where an individual has both eyes,
- (b) references to measurements of visual acuity are references to clarity of vision as measured on the Snellen Scale,
- (c) references to visual field are to the combined visual field of both eyes, where an individual has both eyes.

Exclusion of entitlement to mobility component where individual is prevented from moving

8. No payment of the mobility component of disability assistance is to be made in respect of an individual who is in a coma or who cannot be moved safely as a result of their condition.

Exclusion of entitlement to disability assistance while in receipt of Disability Living Allowance

9. No individual is eligible to receive disability assistance while Disability Living Allowance is payable in respect of the individual.

[Other exclusions

10. (*Holding provision*)

PART 4

Entitlement under special rules for terminal illness and when undergoing dialysis

Entitlement under special rules for terminal illness

11.—(1) An individual who has not reached the age of 18 years and has a terminal illness is entitled to—

- (a) the highest rate of the care component of disability assistance, and
- (b) from the date on which the individual reaches the age of 3, the higher rate of the mobility component.

(2) Paragraph (1) applies regardless of—

- (a) the period of time for which the individual has had the terminal illness, and
- (b) any period of time spent by the individual in a care home, hospital or hospice while in receipt of the assistance.

(3) Subject to paragraph (4), the entitlement referred to in paragraph (1) begins on the day on which the Scottish Ministers receive a verification form.

(4) Where—

- (a) a person applies for disability assistance in respect of an individual who has a terminal illness, and
- (b) a verification form is submitted to the Scottish Ministers, dated earlier than the date on which entitlement is taken to have begun applying regulation 25(5) and (6) (beginning of entitlement to assistance),

entitlement runs from the date of completion of the verification form.

(5) A diagnosis of terminal illness is verified by submission to the Scottish Ministers of a verification form completed by a registered medical practitioner or a registered nurse in respect of the individual, without the need for any further evidence.

(6) For the purpose of this regulation an individual is to be regarded as having a terminal illness if the individual has a progressive disease which, in the clinical judgement of a registered medical practitioner, or a registered nurse, can reasonably be expected to cause the individual's death.

(7) A person exercising the judgement described in paragraph (6) must take account of the guidance, known as Guidance for Doctors Completing Benefits Assessment under Special Rules in Scotland (BASRiS) Form for Terminal Illness, made publicly available by the Chief Medical Officer of the Scottish Administration.

(8) In this regulation a verification form means—

- (a) a Benefits Assessment under Special Rules in Scotland (BASRiS) Form, completed by a registered medical practitioner or a registered nurse in respect of the individual, or
- (b) where the individual who has the terminal illness is in possession of a DS 1500 report in connection with entitlement to Employment and Support Allowance or Universal Credit, completed by a registered medical practitioner [or a registered nurse in respect of the individual], a DS 1500 report.

Entitlement to care component when undergoing dialysis

12.—(1) An individual who is at least 3 months old, but has not reached the age of 18 years, is to be taken to meet the condition in regulation 5(1)(a) (care component criteria) for entitlement to the middle rate care component of disability assistance where the person undergoes either of the treatments mentioned in paragraph (3) at least twice a week.

(2) Paragraph (1) does not apply for the purpose of determining whether an individual is to be taken to satisfy the time periods set out in regulation [] (age of child or young person and expected duration of care requirements on application).

(3) The treatments referred to in paragraph (1) are—

- (a) haemodialysis, and
- (b) intermittent peritoneal dialysis.

PART 5

Effect of time spent in care homes, residential educational establishments, hospitals and in legal detention

Effect of admission to a care home or residential educational establishment on ongoing entitlement to care component

13.—(1) This regulation applies where an individual in respect of whom the care component of disability assistance is paid, becomes a resident of a care home or a residential educational establishment.

(2) Subject to paragraphs (3) to (5), an individual ceases to be entitled to the care component of disability assistance on the day after the day on which the person has been resident in a care home or a residential educational establishment for 28 days.

(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 one.

(4) An individual continues to be entitled to the care component of disability assistance throughout any period when the individual is resident in a care home or a residential educational establishment, 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 assistance from a charity.

(5) For the purposes of this regulation an individual is not resident in a care home or a residential educational establishment 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—
 - (i) under the age of 16, or
 - (ii) 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 or residential educational establishment outside the United Kingdom, where the costs of any qualifying services are met by a local authority exercising its powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004(a).

(6) For the purposes of this regulation and regulation 16 (entitlement beginning while resident of a care home or residential educational establishment)—

- (a) “qualifying services” are the costs of accommodation, board and personal care,
- (b) references to an individual being “looked after by a local authority” is to be construed as the case may be in accordance with—
 - (i) section 17(6) of the Children (Scotland) Act 1995(),
 - (ii) section 105(4) of the Children Act 1989(), or
 - (iii) article 25 of the Children (Northern Ireland) Order 1995().

Calculation of periods of time spent in a care home or a residential educational establishment

14.—(1) Subject to paragraph (3), a period during which an individual who falls within regulation 13 is resident in a care home or a residential educational establishment is taken—

- (a) to begin on the day after the day on which the individual enters the care home or residential educational establishment, and
- (b) to end on the day before the day on which the individual leaves the care home or residential educational establishment.

(2) Where an individual who is resident in a care home or a residential educational establishment takes a period of leave from the home or establishment, the days on which the

(a) 2004 asp4.

individual begins and returns from leave are not to be counted as days in the home or establishment.

(3) Where an individual enters or returns to a care home or a residential educational establishment as a result of a transfer from a hospital or a hospice, or from another care home or educational establishment, the day of transfer is to be counted as a day in a care home or educational establishment.

Effect of legal detention on entitlement to care component of disability assistance

15.—(1) This regulation applies where an individual in respect of whom the care component of disability assistance is paid, at any rate, is detained in legal custody within the meaning of section 295 the Criminal Procedure (Scotland) Act 1995(a).

(2) An individual will cease to be entitled to the care component of disability assistance on the day after the day on which the individual has been detained for 28 days.

Entitlement beginning while resident of a care home or residential educational establishment

16.—(1) This regulation applies where an individual is resident in a care home or a residential educational establishment on the day on which entitlement to disability assistance is taken to have begun, applying regulation 25 (when an application is to be treated as made and beginning of entitlement to assistance).

(2) Subject to the following paragraphs of this regulation, an individual cease to be entitled to the care component of disability assistance after a period of 28 days, beginning with the day on which entitlement is to be taken to have begun.

(3) A determination without an application must be made after the expiry of the period of 28 days, to determine whether the person's entitlement has ceased.

(4) Paragraph (2) applies only where the individual has spent a total of 28 days in a care home or residential educational establishment since the day on which entitlement is taken to have begun.

(5) The period of 28 days referred to in paragraph (2) must be consecutive but may comprise the cumulative total of days spent in more than one care home or residential educational establishment.

(6) Paragraph (2) does not apply where the 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 assistance from a charity.

(7) For the purposes of this regulation an individual is not resident in a care home or a residential educational establishment 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—
- (b) (i) under the age of 16, or
(ii) 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

(a) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).

- (iii) accommodated in a care home or residential educational establishment outside the United Kingdom, where the costs of any qualifying services are met by a local authority exercising its powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004.

Application for care component of disability assistance while on leave from a care home or residential educational establishment.

17.—(1) This regulation applies where an individual who is not in receipt of the care component of disability assistance takes leave from a care home or a residential educational establishment.

(2) An application for the care component of disability assistance may be made during the period beginning [...] and ending [...*policy to be settled*].

(3) An individual is eligible for the care component of disability assistance for the period beginning with the day on which the person goes on leave and ending on the day after the day on which the person returns to the care home or residential educational establishment.

Entitlement to care component of disability assistance while an inpatient

18.—(1) For the avoidance of doubt, any period when a person is an in-patient in a hospice, has no effect on the person’s entitlement to the care component of disability assistance.

PART 6

Winter heating costs

Payment towards winter heating costs

19.—(1) The Scottish Ministers must make a determination of entitlement to Winter Heating Assistance, without an application, in respect of any individual who –

- (a) is in receipt of the highest rate of the care component of disability assistance for at least one day of the qualifying week, or
- (b) as a result of a determination without an application made under regulations 29 or 30 or the outcome of a re-determination or an appeal under sections 43 or 46 of the 2018 Act, is in receipt of disability assistance which has effect for at least one day of the qualifying week

(2) Where the condition in paragraph (3) is met, a single payment of £200 is to be made, to help meet the costs of heating during winter months.

(3) For the purposes of this regulation, and regulation 33, the “qualifying week” means the week running from the third Monday in September in any given year.

PART 7

Short-term assistance

Entitlement to short-term assistance

20.—(1) Subject to paragraph (2), a recipient of disability assistance is entitled to short-term assistance upon application where—

- (a) a determination of entitlement in respect of the individual has been superseded by a subsequent determination,
- (b) the effect of the subsequent determination is that the individual—

- (i) is no longer entitled to disability assistance, or
 - (ii) is entitled to less of either component of that type of assistance ,
 - (c) the individual's entitlement to disability assistance is under review within the meaning of paragraph 1(2) of schedule 10 of the 2018 Act, and
 - (d) the individual—
 - (i) continues to meet the conditions as to residence and presence set out in regulation 4, or
 - (ii) has transferred to become ordinarily resident in another part of the United Kingdom, and the matter under review is the determination of entitlement for the three month period beginning with the day on which notification of transfer is received by the Scottish Ministers, in accordance with regulation 40 (persons in respect of whom disability assistance is paid at the time of transferring to another part of the United Kingdom).
- (2) [An individual is not entitled to short-term assistance where the individual is no longer entitled to disability assistance as a result of a determination made that—
- (a) the Scottish Ministers consider, on the balance of probability, that the person's existing entitlement was determined as a result of the commission of an offence under section 71, 72 or 73 of the 2018 Act,
 - (b) in the case of an individual who has transferred to Scotland from another part of the United Kingdom in accordance with regulation 39 (persons in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland), the Scottish Ministers are informed that the Secretary of State considers, on the balance of probability, that the earlier award of Disability Living Allowance was made as a result of the commission of an offence under section 111A (dishonest representations for obtaining benefit etc.) or 112 (false representations for obtaining benefit etc.) of the Social Security Administration Act 1992, or
 - (c) regulation 13 (effect of admission to a care home or residential educational establishment on entitlement to care component) or 15 (effect of legal detention on entitlement to care component).]
- (3) Entitlement to short term assistance begins on the earlier of the date when—
- (a) a request is made under section 41 of the 2018 Act (right to request re-determination) for a re-determination, on the day that request is made,
 - (b) a notice of appeal is submitted under section 47 of the 2018 Act (initiating an appeal), on the day it is accepted,
 - (c) a decision of the Scottish Ministers is made not to accept a request for a re-determination, on the day that decision is set aside by the First-tier Tribunal for Scotland,
 - (d) a request is made under section 48(1)(b) of the 2018 Act for permission to appeal, on the day that request is made.

Value and form

21.—(1) The value of short-term assistance payable is to be the difference between the level of assistance paid under the earlier determination, and the level paid under the determination by which it is superseded.

(2) Where, under the determination which has been superseded, a deduction was made to meet a liability, in accordance with paragraph 15 of schedule 5 of the 2018 Act, such a deduction is to be made from the payment of Short Term Assistance.

(3) The form in which the short term assistance is given is the same as provided for in regulation 37(4).

End of entitlement

22. Entitlement to short-term assistance ends —

- (a) on the day a determination is made by the Scottish Ministers under section 43 of the 2018 Act (duty to re-determine),
- (b) on the day the First-tier Tribunal for Scotland makes a decision under section 49 of the 2018 Act (First-tier Tribunal's power to determine entitlement), or
- (c) on the day that the First-tier Tribunal for Scotland makes a decision to refuse permission under section 48(1)(b) of the 2018 Act (deadline for appealing) to bring an appeal.

PART 8

Making of applications and payments and duration of eligibility

Age criteria

23.—(1) Subject to the following provisions of this regulation, regulation 11 (entitlement under special rules for terminal illness) and regulation 12 (entitlement to care, component when undergoing dialysis), disability assistance may be paid in respect of an individual who is aged at least 3 months but is under the age of 18 years.

(2) Where an individual's entitlement to DAWAP has not been determined before the day of the person's 18th birthday, the person may continue to receive disability assistance until the earlier of—

- (a) the date their entitlement to DAWAP is determined, or
- (b) the person's 19th birthday.

(3) disability assistance may only be paid in respect of an individual who is, on the day on which entitlement is taken to have begun, in accordance with regulation 25 (when an application is to be treated as made and beginning of entitlement to assistance), under the age of 16.

Making payments

24.—(1) Where disability assistance is payable in respect of an individual under the age of 16 years, it is to be paid to the person specified in the application to be used for the benefit of the individual.

(2) Where disability assistance is payable in respect of an individual aged 16 years or more, the Scottish Ministers may, where they consider it appropriate, pay the assistance to another person to be used for the benefit of the individual person.

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

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

25.—(1) An application 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 the requirement in regulation 5(3) (care component criteria) or 23 (age criteria), if the application were treated as made on the day it was received, and
- (b) would be eligible to receive disability assistance if those requirements were satisfied,

the Scottish Ministers may treat the application as having been made on the day on which those requirements become satisfied.

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

(4) Where an application is made within 6 weeks of the day on which the data required to construct a record in respect of a child or young person is submitted to the Scottish Ministers, entitlement begins on the later of—

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

(5) Subject to paragraph (6), where an application is made outwith the 6 week period described in paragraph (4), entitlement begins on the day on which the application is treated as having been made.

(6) Where the Scottish Ministers are satisfied that there is good reason why an application was made outwith the 6 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 of the 2018 Act, the period covered by an application for disability assistance—

- (a) begins on the day on which the application is treated as having been made, and
- (b) ends on the later of—
 - (i) the day on which the determination of entitlement is issued,
 - (ii) the day on which a re-determination of entitlement is issued,
 - (iii) the day on which a decision is made in relation to an appeal.

Time of payment

26. Where an award of disability assistance is made, the Scottish Ministers are to pay assistance

- (a) 4 weekly in arrears, or ,
- (b) where regulation 11 (entitlement under special rules for terminal illness) applies, weekly in advance.

Continuing eligibility

27. An individual's entitlement to disability assistance is to be made on the basis that the individual has ongoing entitlement to that assistance.

28. The eligibility rules prescribed in regulations 4 to 7, are taken to continue to be satisfied in an individual's case, for such period as the Scottish Ministers state in the statement of determination.

PART 9

Re-consideration of entitlement to Disability Assistance for Children and Young People: determination without application

Consideration of entitlement after specified period

29.—(1) The Scottish Ministers must make a determination of an individual's entitlement to disability assistance, without receiving an application, at the end of the period specified in the individual's statement of determination.

(2) In connection with such a determination, the Scottish Ministers may—

- (a) request that information be supplied to them by a specified date, and
- (b) give notice that if the information is not supplied by that date, they may proceed, without further consideration, to make a determination that the relevant conditions of eligibility are no longer met.

Other situations requiring a determination without an application

30.—(1) The Scottish Ministers must make a determination of an individual’s entitlement to disability assistance, without receiving an application, where,—

- (a) during the period specified in the individual’s statement of determination, they become aware—
 - (i) of a change of circumstances likely to result in an alteration to the level of disability assistance payable in respect of the person,
 - (ii) that the person has been admitted to a care home or residential educational establishment for a period of 28 days or more,
 - (iii) that regulation 21 applies to the person (effect of legal detention on entitlement to care component of disability assistance),
 - (iv) that a determination of the person’s entitlement was made in ignorance of a material fact which existed at the time of the determination,
 - (v) that the individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error),
 - (vi) of an alteration of the level of award of Disability Living Allowance of which an individual was in receipt immediately before transferring to Scotland in accordance with regulation 43 (persons in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland),
- (b) they are informed that an individual in respect of whom disability assistance is payable, has transferred—
 - (i) to Scotland from another part of the United Kingdom (see regulation 39- persons in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland), or
 - (ii) from Scotland to another part of the United Kingdom (see regulation 44- persons in respect of whom disability assistance is paid at the time of transferring to another part of the United Kingdom),
- (c) they consider, on the balance of probability, that the person’s existing award was made, or has continued, as a result of the commission of an offence under section 71, 72 or 73 of the 2018 Act,
- (d) they are informed that, in the case of an individual who has transferred to Scotland from another part of the United Kingdom in accordance with regulation 39, the Secretary of State considers, on balance of probability, that an offence under section 111A (Dishonest representations for obtaining benefit etc.) or 112 (False representations for obtaining benefit etc.) of the Social Security Administration Act 1992^(a) has been committed],
- (e) entitlement is altered as a result of a change of eligibility criteria for disability assistance,
- (f) an application for disability assistance is made which is not in accordance with section 38(1) of the 2018 Act (application for assistance), or
- (g) a request is made that disability assistance no longer be paid.

(2) In reaching a determination under paragraph (1)(a), the Scottish Ministers are to use—

- (a) the information used to make the most recent determination of the person’s entitlement to disability assistance and, where relevant, earlier determinations,

(a) 1992, c 4.

- (b) the information which led to the making of the determination under paragraph (1), and
- (c) any other information subsequently obtained in connection with the making of the determination under that paragraph, and
- (d) any other relevant information before them.

Determination following official error

31.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to disability assistance, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to disability assistance,
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual—
 - (i) not being given an award of disability assistance to which they were entitled, or
 - (ii) being given a lower award than that to which they were entitled,
- (c) there has been no request for re-determination of the individual’s entitlement to disability assistance, and
- (d) no appeal has been brought in relation to that determination.

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

When changes of entitlement take effect

32.—(1) Where, as a result of a determination without an application, the amount of disability assistance payable in respect of an individual is increased, the increased entitlement—

- (a) in the case of a change in the law, begins on the date on which the relevant provision comes into force,
- (b) in the case of an increase in the level of award of Disability Living Allowance of which an individual was in receipt at the time of transferring to Scotland in accordance with regulation 44 (persons in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland), begins on the date of the first determination of entitlement to disability assistance,
- (c) in the case of an earlier determination which was based on official error within the meaning of regulation 32 (determination following official error: meaning of “official error”) or on ignorance of facts material to the determination, begins on the date of that earlier determination.

(2) Where, as a result of a determination without an application, the amount of disability assistance payable in respect of an individual is decreased, or entitlement ceases, the change in entitlement begins on the date of the determination or, in the case of a change in the law, on the date on which the relevant provision comes into force .

(3) This regulation is subject to regulation 33 (timing of notification of change in circumstances).

Timing of notification of change in circumstances

33.—(1) Where the Scottish Ministers consider on balance of probability that a requirement to notify a change in circumstances imposed in accordance with section 56 of the 2018 Act has not been met, the altered entitlement begins—

- (a) in the case of a change which increases an individual’s level of entitlement, on the date on which notification of the change was received by the Scottish Ministers,

- (b) in the case of a change which decreases an individual's level of entitlement, or results in entitlement ceasing, on the date on which the Scottish Ministers consider notification would have been received if the requirement to notify had been met.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may fix an earlier date under paragraph 1(a), or a later date under paragraph (1)(b).

PART 10

Procedural matters

Period for re-determination request

34.—(1) The period prescribed for requesting a re-determination of entitlement under section 41 of the 2018 Act is 42 days from the day after the day on which statement of determination was issued.

(2) The period prescribed for making a re-determination under section 43 of the 2018 Act is 56 days beginning with the day that the request for a re-determination is received by the Scottish Ministers.

Award in anticipation of 16th birthday

35.—(1) Subject to paragraph (2), and to any review undertaken under regulation 30 (other situations requiring a determination without an application), where disability assistance is expected to be payable in respect of an individual on the person's 16th birthday, a determination of entitlement is to be made in advance of that date, running up to and including the day before the person's 18th birthday.

(2) Paragraph (1) does not apply where disability assistance is paid under regulation 11 (entitlement under special rules for terminal illness).

(3) Where a determination is made in accordance with paragraph (1), no payment of DAWAP may be made in respect of the period covered by that determination. .

Individual born in a leap year

36. Where an individual was born on 29 February, their birthday is to be taken to fall on 28 February for the purposes of regulation 35.

PART 11

Assistance to be given

Amount and form of disability assistance

37.—(1) The weekly rates of payment of the care component are—

- (a) the highest rate is £[87.65],
- (b) the middle rate is £[58.70], and
- (c) the lowest rate is £[23.20].

(2) The weekly rates of payment of the mobility component are—

- (a) the higher rate is £[61.20], and
- (b) the lower rate is £[23.20].

(3) Payment of the care component may be made on a daily basis where the recipient's entitlement to that component ceases in accordance with regulation 13(2) (effect of admission to care home etc.).]

(4) disability assistance may be given in a form other than money only, with the agreement of the recipient.

(5) The agreement of the recipient may be withdrawn at any time.

(6) For the purposes of this regulation "daily basis" means a payment based on a daily rate which is one-seventh of the relevant weekly rate.

PART 12

Provision of vehicles

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

38.—(1) Where—

- (a) the higher rate mobility component of disability assistance is paid in respect of an individual, and
- (b) the recipient of the component 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 pay that component (in whole or in part) to the provider, to meet 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 the agreement is brought to an end in accordance with the terms of the agreement.

(3) For the purposes of this regulation, "authorised provider of vehicles" means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers.

PART 13

Transfer of claims between Scotland and the rest of the United Kingdom

Individuals in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland

39.—(1) Subject to paragraph (3), where —

- (a) an individual who is under 18 years of age and ordinarily resident in another part of the United Kingdom transfers to become ordinarily resident in Scotland, and
- (b) Disability Living Allowance is paid in respect of the person as at the date of the transfer,

the Scottish Ministers are to make a determination without application that the person is entitled to the equivalent components and levels of disability assistance as of Disability Living Allowance payable as at the date of transfer.

(2) Entitlement to disability assistance under paragraph (1) begins on the day after the day on which Disability Living Allowance ceases to be paid in respect of the individual.

Individuals in respect of whom disability assistance is paid at the time of transferring to another part of the United Kingdom

40.—(1) Where the Scottish Ministers are notified that an individual in respect of whom disability assistance is paid has transferred or is to transfer to become ordinarily resident in another part of the

United Kingdom, payment of disability assistance is to cease at the end of the period of 3 months beginning with the day on which the notification is received.

(2) Where the Scottish Ministers receive notification under paragraph (1), they must make a determination of entitlement without application to the end of the 3 month period.

(3) Where before the end of the 3 month period, the Scottish Ministers are notified that the individual is no longer to transfer to become ordinarily resident in another part of the United Kingdom, the notice referred to in paragraph (1) is to be treated as not having been made.

(4) Where, before the end of the 3 month period, the Scottish Ministers are notified that the individual requests an extension to that period to provide more time to effect the transfer to Disability Living Allowance, the Scottish Ministers may extend the period beyond 3 months.

PART 14

Liability for over payment

41. [*Provision as to deductions from disability assistance in respect of liability to the Scottish Ministers.*]

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 deals with age rules and arrangements for payment of disability assistance (“the assistance”), as well as the duration of eligibility for assistance.

Part 3 deals with eligibility for the assistance on account of having a disability.

Part 4 sets out rules of entitlement to the assistance on account of having a terminal illness, and when undergoing dialysis at home.

Part 5 deals with the effect on entitlement to the care component of the assistance of residence in a care home, residential educational establishment or hospital.

Part 6 sets out entitlement to an additional payment, towards the costs of heating in the winter months.

Part 7 deals with entitlement to short term assistance, to bridge the gap, in the event that entitlement to the assistance is reduced or removed. This is payable, in certain circumstances, during the time when the change in entitlement is being challenged but the outcome is not yet known.

Part 8 deals with the making of applications and payments and duration of eligibility.

Part 9 deals with reconsideration of entitlement, where an award of assistance has already been made and is being revisited.

Part 10 deals with procedural matters, including time periods for dealing with requests for redetermination of entitlement.

Part 11 deals with the rate and form of payment of the assistance.

Part 12 makes provision for the Scottish Ministers to make payment to suppliers of adapted vehicles, with whom recipients of the assistance have entered agreements for hire or hire purchase. These suppliers must be accredited according to a scheme operated by the Scottish Ministers.

Part 13 deals with the situation where people in receipt of the assistance, and the DWP equivalent, transfer to and from Scotland, from other parts of the United Kingdom.

Part 14 deals with deductions from the assistance to meet a liability to the Scottish Ministers.