

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

SOCIAL SECURITY

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

Made - - - -

Coming into force - -

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SCHEDULE

- PART 1 — Short-term assistance
- PART 2 — Consequential amendment

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 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 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.

(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.

PART 1

Introductory and interpretation

Citation and commencement

1. (1) These Regulations may be cited as the Disability Assistance for Children and Young People (Scotland) Regulations [].
- (2) These Regulations come into on [].

Interpretation

2. In these Regulations—

- “the 2018 Act” means the Social Security (Scotland) Act 2018,
- “armed forces independence payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011,
- “attention” means the provision of personal care, prompting or motivation in relation to bodily functions or assistance with communication needs,
- “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 an individual who has not yet reached the age of 16 years,
- “Child Disability Payment” means disability assistance for children and young people,
- “determination” or “determination of entitlement” means a determination of an individual’s entitlement to assistance under section 37 of the 2018 Act,
- “disability assistance for working age people” means disability assistance for working age people paid in accordance with regulations made under section 31 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),
- “hospice” means premises used for the purpose of caring for the dying or incurably ill,
- “legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(b) but does not include detention under—
- (a) section 59A of that Act, or
 - (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003(c),
 - (c) “recipient” means the individual to whom Child Disability Payment is paid,
- “personal independence payment” means the disability benefit paid in accordance with section 77 of the Welfare Reform Act 2012,
- “residential educational establishment” means a school which also provides accommodation, board and personal care (where required by an individual), and
- “Title III of Part 2 of the withdrawal agreement (coordination of social security systems)” means 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(d).
- “young person” means an individual who—
- (a) is aged 16, or 17, or

(a) 1992 c.4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).
(b) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).
(c) 2003 asp 13.
(d) 2019/C 384 I/01.

- (b) is aged 18 and has applied for and is awaiting a determination of entitlement to disability assistance for working age people.

PART 2

Disability assistance for children and young people

Overview

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

- (a) the requirement to be a child or young person,
- (b) the residence and presence conditions in regulation 4,
- (c) the care component criteria in regulation 5, and
- (d) the mobility component criteria in regulations 6 and 7.

(2) Child Disability Payment is to consist of a care component and a mobility component.

(3) An individual's entitlement to Child Disability Payment may be an entitlement to either component or to both of them.

(4) Paragraph (1)(c) and (d) do not apply to an individual to whom regulation 9 (entitlement under special rules for terminal illness) applies.

(5) An individual must make an application for Child Disability Payment other than in circumstances where a determination without application is to be made.

(6) An individual is not entitled to Child Disability Payment if they are entitled to disability assistance for working age people under regulations made under section 31 of the 2018 Act.

(7) An individual is not entitled to Child Disability Payment while being entitled to Disability Living Allowance, Personal Independence Payment or Armed Forces Independence Payment.

(8) An individual to whom Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies is not entitled to the care component for a period, unless during that period, the United Kingdom is competent for payment of sickness benefits in cash to that individual for the purposes of Chapter 1 of Title 3 of one of the Regulations set out in Article 31 of that Title.

(9) There are 3 weekly rates of the care component, and these are specified in regulation 30 (amount and form of Child Disability Payment).

PART 3

Eligibility

Residence and presence conditions

4.—(1) An individual satisfies the residence and presence conditions if 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^(a) applies, within the meaning of section 115(3) of that Act for the purposes of entitlement to Child Disability Payment, and
- (d) is present in the United Kingdom where the individual satisfies one of the conditions mentioned in paragraph (2).

(2) The conditions referred to in paragraph (1)(d) are—

(a) 1999, c.33.

- (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, or
- (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 the day when the application is treated as having been made.

(3) An individual is to be treated as meeting the residence and presence conditions set out in paragraph (1)(a), (b) and (d) for any period where that individual—

- (a) is outside the United Kingdom in their capacity as a—
 - (i) serving member of the forces, or
 - (ii) civil servant, or
- (b) is living with a person mentioned in sub-paragraph (a), and is the spouse, civil partner, parent, step-parent, child or step-child of that person, or

and who can demonstrate a genuine and sufficient link to Scotland.

(4) An individual is to be treated as meeting the presence condition set out in paragraph (1)(d) for any period where that individual—

- (a) is outside the United Kingdom in their capacity as an airman or mariner, or
- (b) 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,

and who can demonstrate a genuine and sufficient link to Scotland.

(5) Where an individual—

- (a) does not meet the presence condition set out in paragraph (1)(d) on the date the application is received by the Scottish Ministers, and
- (b) will meet that condition, unless there is a change of circumstances, on a date (“the relevant date”) not later than 3 months after the application was received,

the Scottish Ministers may make a determination that the individual is entitled to Child Disability Payment from the relevant date where the condition is met on the relevant date.

(6) In this regulation—

“civil servant” means a person employed in the civil service of the State,

“Common Travel Area” has the meaning given in section 1(3) of the Immigration Act 1971,

“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,
- (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 their 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 their employment is as a serving member of the forces, and
- (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 their employment is as a serving member of the forces.

(7) Where an individual is temporarily absent from the United Kingdom, the individual is to be treated as present in the United Kingdom for—

- (a) the first 13 weeks of that absence for any reason, or
- (b) the first 26 weeks of that absence where—
 - (i) 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,
 - (ii) the arrangements relate to medical treatment—
 - (aa) outside the United Kingdom,
 - (bb) during the period when the individual is temporarily absent from the United Kingdom, and
 - (cc) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(8) For the purposes of paragraph (7)—

- (a) an individual is “temporarily absent” if, at the beginning of the period of absence, that absence is not expected to exceed 52 weeks, and

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

(b) “medical treatment” means medical, surgical, psychological or rehabilitative treatment.

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

- (a) has a terminal illness within the meaning of regulation 9, 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.

(10) For the purposes of paragraph (9)(b) “immigration rules” means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971(a).

(11) The residence and presence conditions set out in paragraph (1) do not apply where on any day—

- (a) the individual is—
 - (i) habitually resident in the United Kingdom, and
 - (ii) ordinarily resident in Scotland,
- (b) Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies, and
- (c) the individual can demonstrate a genuine and sufficient link to Scotland.

(12) The residence and presence conditions set out in paragraph (1) do 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) Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies to the individual, and
- (c) the individual can demonstrate a genuine and sufficient link to Scotland.

Care component criteria

5.—(1) An individual satisfies the care component criteria in respect of any period throughout which it appears to the Scottish Ministers that at least one of the following conditions is satisfied—

- (a) the individual is so severely disabled physically or mentally that they require in connection with their 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 16 years old or older and is so severely disabled physically or mentally that they cannot prepare a cooked main meal for themselves if they have the ingredients,
- (c) the individual is so severely disabled physically or mentally that they require from another person—
 - (i) frequent attention throughout the day in connection with their bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to the individual or others, or
- (d) the individual is so severely disabled physically or mentally that they require—
 - (i) prolonged or repeated attention from another person throughout the night in connection with their bodily functions, or
 - (ii) another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over the individual throughout the night in order to avoid substantial danger to the individual or others.

(a) 1971, c.77.

- (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 a person of the same 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) An individual is not entitled to the care component unless—
- (a) throughout the period of 13 weeks 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) as read with paragraph (2), and
 - (b) the individual is likely to continue to satisfy one of those conditions throughout the period of 26 weeks beginning with that date.
- (4) Paragraph (3) does not apply to an individual to whom regulation 9 (entitlement under special rules for terminal illness) applies.
- (5) 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 (2) 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.
- (6) The weekly rate of the care component payable to an individual for each week in the period for which they are 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)(c) and (d) 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 mentioned in paragraph (1)(c) or (d) throughout both those periods, and
 - (c) the lowest rate in any other case.
- (7) In paragraph (1) references to “day” and “night” are construed in relation to the ordinary domestic routine of the household in which the individual lives.
- (8) In paragraph (1) and regulations 6 and 7, “supervision” means the precautionary or anticipatory presence of another person to monitor an individual’s physical, mental or emotional health including monitoring for obstacles or dangerous places or situations.
- (9) In this regulation and regulations 6 and 7, “require” means reasonably require and cognate expressions are to be construed accordingly.

Mobility requirements: lower rate mobility component

- 6.—**(1) An individual aged 5 years or more is entitled to the lower rate of the mobility component if that individual, though able to walk, cannot move around outdoors without requiring guidance or supervision from another person most of the time.
- (2) The guidance or supervision required must be—
- (a) substantially in excess of the normal requirements of a person of the same age, or
 - (b) of such a description which younger persons in normal physical and mental health may also need but which persons of the individual’s age and in normal physical and mental health would not need.
- (3) In the case of an individual who is under the age of 16 on the date on which the award of the mobility component would begin, paragraph (2) 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) 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.

(5) An individual is not entitled to the lower rate of the mobility component where they cannot move around outdoors because of fear or anxiety.

(6) Paragraph (5) does not apply where the fear and anxiety is—

- (a) a symptom of a mental disability, and
- (b) so severe as to prevent the individual from moving around outdoors.

(7) An individual is not entitled to the lower rate of the mobility component unless—

- (a) throughout the period of 13 weeks immediately preceding the date on which the award of that component would begin, the individual has satisfied or is likely to satisfy the condition mentioned in paragraph (1), and
- (b) the individual is likely to continue to satisfy the condition mentioned in paragraph (1) throughout the period of 26 weeks beginning with that date.

(8) In this regulation, “guidance” means direction or leading by physical means or verbal suggestion or persuasion.

Mobility requirements: higher rate mobility component

7.—(1) An individual aged 3 years or more is entitled to the higher rate of the mobility component if it appears to the Scottish Ministers that the individual satisfies at least one of the conditions mentioned in paragraph (2).

(2) The conditions referred to 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, time taken, manner of walking, ability to cover distance, including the distance that can be walked without beginning to experience severe discomfort,
- (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 has no legs or no feet (regardless of the use of artificial limbs),
- (e) the individual has a severe visual impairment,
- (f) the individual is blind and deaf,
- (g) the individual has a severe mental impairment or severe behavioural difficulties and satisfies both of the conditions mentioned in regulation 5(1)(c) and (d).

(3) Except where paragraph (2)(d) applies in relation to an individual, the test of being unable or virtually unable to walk is not met 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)(e), if the individual—

- (a) has a severe visual impairment fulfilling the definition from the Visual Impairment Network for Children and Young People^(a), and
- (b) the individual is unable to mobilise safely without help or supervision of another person due to severe sight impairment, taking into account their age.

(5) An individual is taken to be blind and deaf, for the purpose of paragraph (2)(f), if the individual—

- (a) is blind where the degree of disablement resulting from the loss of vision amounts to 100%, and

(a) A National Managed Clinical Network forming part of NHS Scotland <https://www.vincyp.scot.nhs.uk/vincyp-definition/>.

- (b) is deaf where the degree of disablement resulting from loss of hearing when using any artificial aid which they habitually use or which is suitable in their case amounts to not less than 80% on a scale where 100% represents absolute deafness.
- (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 severe impairment of intelligence and social functioning 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)(g), if the individual exhibits disruptive behaviour which—
- (a) is extreme,
 - (b) regularly requires another person to intervene and physically restrain them or another intervention as described by their positive behavioural support plan in order to prevent physical injury to the individual themselves or another person, 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 any—
- (a) reference to the definition from the Visual Impairment Network for Children and Young People requires the individual to meet one or more of the following criteria—
 - (i) best corrected visual assessment, both eyes open 0.500 or worse,
 - (ii) visual field loss, both eyes open, which significantly affects function,
 - (iii) any eye movement disorder which significantly affects function,
 - (iv) any form of cognitive visual dysfunction due to disorders of the brain which can be demonstrated to significantly affect function,
 - (v) N18 print or larger required for comfort reading, and
 - (b) reference to a positive behavioural support plan means an assessment or plan that relates to the provision of care and support of, or treatment provided to, an individual used by health, social care or education services that sets out the interventions required to prevent or to reduce the likelihood of incidents of challenging behaviour in relation to the individual.
- (9) An individual is not entitled to the mobility component unless—
- (a) throughout the period of 13 weeks 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 (2), and
 - (b) the individual is likely to continue to satisfy one of those conditions throughout the period of 26 weeks beginning with that date.

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

8. An individual who is in a coma or who cannot be moved safely as a result of their condition is not entitled to the mobility component of Child Disability Payment.

PART 4

Entitlement under special rules for terminal illness and when undergoing dialysis

Entitlement under special rules for terminal illness

9.—(1) An individual who has not reached the age of 18 years (unless regulation 18(3) (age criteria) applies), meets the residence and presence conditions in regulation 4 and has a terminal illness is entitled to—

- (a) the highest rate of the care component of Child Disability Payment, 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 hospital or hospice while in receipt of the assistance.

(3) Subject to paragraph (4) or (5), the entitlement referred to in paragraph (1) begins either on the date of receipt of the application or on the date of the clinical judgement made in accordance with paragraphs (6) and (7) (“the judgement”) whichever is the earlier.

(4) Where a judgement mentioned in paragraph (3) is dated not more than 26 weeks earlier than the date of receipt of the application an individual’s entitlement can only begin—

- (a) up to a maximum of 26 weeks prior to the date of receipt of the application, and
- (b) on or after the day these Regulations come into force.

(5) Where a judgement mentioned in paragraph (3)—

- (a) is dated more than 26 weeks earlier than the date of receipt of the application, and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (6) and (7),

an individual’s entitlement can only begin—

- (c) up to a maximum of 26 weeks prior to the date of receipt of the application, and
- (d) on or after the day these Regulations come into force.

(6) For the purpose of this regulation, an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to Child Disability Payment if it is the judgement of an appropriate healthcare professional that the individual has a progressive disease that can reasonably be expected to cause the individual’s death.

(7) Subject to paragraph (8), an appropriate healthcare professional exercising the judgement described in paragraph (6) must take account of the guidance prepared and made publicly available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(8) Where regulation 4(12) applies to the individual, an appropriate healthcare professional mentioned in paragraph (9)(b) need not take account of the guidance mentioned in paragraph (7) where it is not reasonable to do so.

(9) 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 patient, and
 - (ii) acting in their professional capacity, or
- (b) where regulation 4(12) applies to the individual, a person who—
 - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in an EEA state 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 or Switzerland, and
- (iii) meets the requirements of sub-paragraph (a)(i) and (ii).

Entitlement to care component when undergoing dialysis

10.—(1) An individual who is at least 3 months old, but has not reached the age of 18 years (unless regulation 18(3) (age criteria) applies), is notwithstanding the requirements of regulation 5 (care component criteria), entitled to the care component of Child Disability Payment where the individual undergoes renal dialysis, subject to either of the conditions in paragraph (2) at least twice a week as a consequence of a disability or physical impairment.

(2) The conditions are that—

- (a) the renal dialysis is of a type which normally requires the attendance or supervision of another person, or
- (b) due to particular circumstances, the individual requires another person to attend—
 - (i) in connection with the individual’s bodily functions, or
 - (ii) to supervise the individual in order to avoid substantial danger to them,

during the period of the dialysis.

(3) Where the renal dialysis mentioned in paragraph (2) takes place by day or at night, the individual is entitled to the middle rate care component.

(4) Where the renal dialysis mentioned in paragraph (2) takes place both by day and at night, the individual is entitled to the highest rate care component.

(5) 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 5(3).

PART 5

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

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

11.—(1) This regulation applies where an individual in respect of whom the care component of Child Disability Payment is paid, at any rate, becomes a resident of a care home or a residential educational establishment.

(2) Subject to paragraphs (3) and (5), the value of the care component of Child Disability Payment that is to be given to the individual is to be £0 on and after the day on which the person has been resident in a care home or a residential educational establishment for 28 days until that individual leaves the care home.

(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 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 14 (entitlement beginning while resident of a care home or residential educational establishment)—

- (a) “qualifying services” are accommodation, board and personal care, and
- (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(b),
 - (ii) section 105(4) of the Children Act 1989(c), or
 - (iii) article 25 of the Children (Northern Ireland) Order 1995(d).

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

12.—(1) Subject to paragraph (3), a period during which an individual who falls within regulation 11 is resident in a care home or a residential educational establishment is taken to—

- (a) begin on the day after the day on which the individual enters the care home or residential educational establishment, and
- (b) 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 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 ongoing entitlement to care component

13.—(1) This regulation applies where an individual in respect of whom the care component of Child Disability Payment is paid, at any rate, is in legal detention.

(2) Where an individual has been detained for a 28-day period, which period begins on the day after the individual is detained, the value of the care component of Child Disability Payment that is to be given to the individual is to be £0 on and after the day after that period ends until the individual leaves legal detention.

(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.

(a) 2004 asp4.
(b)
(c)
(d)

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

14.—(1) This regulation applies where an individual is resident in a care home or residential educational establishment on the day on which an application for Child Disability payment is to be treated as made, applying regulation 20 (when an application is to be treated as made and beginning of entitlement to assistance).

(2) Where the application referred to in paragraph (1) is to be treated as made on a date when the individual is resident in a care home or residential educational establishment, entitlement to the care component of Child Disability payment is taken to begin on the day when the individual leaves the care home or the residential educational establishment.

(3) Paragraphs (1) and (2) do 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.

(4) 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
 - (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.

Entitlement to the care component of Child Disability Payment between two periods of residence in alternative accommodation

15.—(1) This regulation applies to an individual to whom regulation 11(2) applies who takes leave from a care home or a residential educational establishment.

(2) The Scottish Ministers must make a determination without application in respect of the care component of Child Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 11(2) applies,
- (b) who takes leave from the care home or residential educational establishment,
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the care home or residential educational establishment within 28 days of the date of taking leave.

(3) Where the individual is taking leave on a date before the review date of the determination made before the individual entered the care home or residential educational establishment, the determination mentioned in paragraph (2) must be at the same rate of the care component as that earlier determination before regulation 11(2) applied.

(4) The period of leave mentioned in paragraph (2) begins with the day on which the person goes on leave and ends on the day after the day on which the person returns to the care home or residential educational establishment.

(5) Where an individual leaves a care home or residential educational establishment permanently they are no longer to be taken to be on leave within the meaning of paragraph (1) where—

- (a) they notify the Scottish Ministers of that fact, and
- (b) a determination without application has been made under regulation 24(1)(a)(ix).

Entitlement to care component of Child Disability Payment while an inpatient

16. For the avoidance of doubt, any period when an individual is an in-patient in a hospice or hospital, has no effect on the individual's entitlement to the care component of Child Disability Payment.

PART 6

Short-term assistance

Entitlement to short-term assistance

17. Part 1 of the schedule makes provision about short-term assistance.

PART 7

Making of applications and payments and duration of eligibility

Age criteria

18.—(1) Subject to the following provisions of this regulation, regulation 9 (entitlement under special rules for terminal illness) and regulation 10 (entitlement to care component when undergoing dialysis), Child Disability Payment may be paid in respect of an individual who is aged at least 3 months but is under the age of 18 years.

(2) Subject to paragraph (3), 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 Child Disability Payment until the earlier of—

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

(3) An individual who has a terminal illness or who is an in-patient in a hospital whose entitlement to DAWAP has not been determined before their 18th birthday may continue to receive Child Disability Payment until the date their entitlement to DAWAP is determined.

(4) Child Disability Payment 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 20 (when an application is to be treated as made and beginning of entitlement to Child Disability Payment), under the age of 16 years.

(5) 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.

Making payments

19.—(1) Where Child 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.

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

20.—(1) An application for Child 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 the requirement in regulation 5(3) (care component criteria), 6(5) (mobility requirements: lower rate mobility component), 7(10) (mobility requirements: higher rate mobility component), or 18 (age criteria), if the application were treated as made on the day it was received, and
- (b) would be likely be entitled to receive Child Disability Payment if those requirements were satisfied,

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

(3) Subject to paragraph (7), where, on the basis of an application, a determination is made that an individual is entitled to Child Disability Payment, 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 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, entitlement begins on 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 6 week period described in paragraph (4), entitlement begins on the day on which the application is treated as having been made in accordance with paragraph (2).

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

(7) Where an individual in legal detention makes an application for Child Disability Payment, the application is to be treated as made on the day after the day when that individual’s detention ends.

(8) For the purposes of section 38 of the 2018 Act, the period covered by an application for Child 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,
- (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

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

- (a) 4 weekly in arrears, or
- (b) where regulation 9 (entitlement under special rules for terminal illness) applies, weekly in advance.

Continuing eligibility and voluntary relinquishment

22. An individual's entitlement to Child Disability Payment is to be made on the basis that the individual has ongoing entitlement to that assistance.

PART 8

Re-consideration of entitlement to Child Disability Payment: determination without application

Consideration of entitlement after specified period

23. The Scottish Ministers must make a determination of an individual's entitlement to Child Disability Payment, without receiving an application, after the end of the period specified (if any) in the individual's notice of determination under section 40 of the 2018 Act.

Other situations requiring a determination without an application

24.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Child Disability Payment, 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 which would possibly result in an alteration to the ~~level~~ rate of Child Disability Payment payable or the cessation of entitlement to Child Disability Payment in respect of the individual,
 - (ii) that the individual has died,
 - (iii) that a determination of the individual's entitlement was made—
 - (aa) in ignorance of, or
 - (bb) as a result of a mistake as to,

a material fact which existed at the time of the determination subject to the provisions of regulations 25(1) and 26(1),

- (iv) of an alteration of the rate of award of Disability Living Allowance of which an individual was in receipt immediately before transferring to Scotland in accordance with regulation 33 (persons in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland) as a result of a decision made pursuant to—
 - (aa) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999,
 - (bb) a supersession under regulation 6 of those Regulations or
 - (cc) an appeal under section 12 of the Social Security Act 1998,
- (v) during the period specified in the individual's statement of determination, they become aware—
 - (aa) that the person has been admitted to a care home or residential educational establishment for a period of 28 days or more,
 - (bb) that regulation 13 applies to the person (effect of legal detention on entitlement to care component of Child Disability Payment),
 - (cc) that the individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error),
- (vi) 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 41, 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],

- (vii) the individual—
 - (aa) has reached 16 years of age, and
 - (bb) has not notified the Scottish Ministers of their bank details,
- (viii) an application for Child Disability Payment is made which is not in accordance with section 38(1) of the 2018 Act (application for assistance),
- (ix) the individual has notified the Scottish Ministers that they have left a care home or residential educational establishment permanently, that they are no longer to be taken to be on leave within the meaning of regulation 15(1),
- (b) they are informed that an individual in respect of whom Child Disability Payment is payable, has transferred—
 - (i) to Scotland from another part of the United Kingdom (see regulation 32 - 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 33 - persons in respect of whom Child Disability Payment is paid at the time of transferring to another part of the United Kingdom),
- (e) entitlement is altered as a result of a change of eligibility criteria for Child Disability Payment.

(2) Paragraph (1) applies only where the Scottish Ministers have previously made a determination of the individual's entitlement to Child Disability Payment.

Determination following official error - underpayments

25.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Child Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously made a determination of the individual's entitlement to Child Disability Payment or short-term assistance, and
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual—
 - (i) not being given an award of Child Disability Payment or short-term assistance, or
 - (ii) being given a lower award than that,to which they were entitled.

(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.

Determination following official error - overpayments

26.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Child Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously made a determination of the individual's entitlement to Child Disability Payment or short-term assistance, and
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual—
 - (i) being given an award of Child Disability Payment or short-term assistance to which they were not entitled, or

(a) 1992, c.4.

(ii) being given a higher award than that to which they were entitled.

(2) In this regulation “official error” means an error made by the Scottish Ministers or a Minister of the Crown that was—

- (a) not materially contributed to by anyone else, or
- (b) made on the basis of—
 - (i) incorrect information, or
 - (ii) an assumption which proves to be wrong.

When changes of entitlement take effect

27.—(1) Where, as a result of a determination without an application, the amount of Child Disability Payment payable in respect of an individual is increased, the changed 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~~ rate of award of Disability Living Allowance of which an individual was in receipt at the time of transferring to Scotland in accordance with regulation 33 (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 Child Disability Payment,
- (c) in the case of a determination without application under regulation 24(1)(a) begins on the date when—
 - (i) the Scottish Ministers made that determination,
 - (ii) where the individual reports the change within one month of the change occurring, the individual satisfies the requirements for a higher rate of the care or mobility component, or
 - (iii) where the individual reports the change after one month but before 13 months of the change occurring, the individual reports the change.
- (d) in the case of an earlier determination which was based on official error within the meaning of regulation 25 or 26 (determination following official error) or on ignorance of, or as a result of a mistake as to, facts material to the determination, begins on the date the Scottish Ministers become aware of the official error or the facts material to the earlier determination.

(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(b), (c) or (d).

(3) Where, as a result of a determination without an application, the amount of Child Disability Payment 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.

(4) This regulation is subject to regulation 28 (timing of notification of change in circumstances).

Timing of notification of change in circumstances

28.—(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 making of a determination without application to alter the entitlement begins—

- (a) in the case of a change which increases an individual’s rate 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 rate 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 9

Procedural matters

Periods in respect of a re-determination request

29.—(1) The period prescribed for requesting a re-determination of an individual's entitlement to Child Disability Assistance under section 41 of the 2018 Act is 42 days beginning with the day after the day on which a notice of determination under section 40 of the 2018 Act was issued by the Scottish Ministers.

(2) The period prescribed for making a re-determination of an individual's entitlement to Child Disability Assistance 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.

PART 10

Assistance to be given

Amount and form of Child Disability Payment

30.—(1) The weekly rate of payment of the care component is—

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

(2) The weekly rate of payment of the mobility component is—

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

(3) Where regulation 15(2) (entitlement to the care component of Child Disability Payment between two periods of residence in alternative accommodation), applies to an individual, payment of that component may be made at one-seventh of the relevant weekly rate, for each day of leave from the care home or residential educational establishment.

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

- (a) the care component of child Disability Payment, and
- (b) payment of Constant Attendance Allowance within the meaning of section 61 of the Social Security Act 1975(a),

the amount of Child Disability Payment paid is reduced by the amount of Constant Attendance Allowance paid.

(5) For the purposes of calculating the reduction in paragraph (4), where the amount of Constant Attendance Allowance is equal to or greater than the amount of Child Disability Payment, the value of the Child Disability Payment that is to be given to the individual is to be £0.

(6) For the period of 8 weeks ending with the death of the individual, the weekly amount of Child Disability Payment paid to that individual is equal to the amount paid in the week ending with the date of death multiplied by two.

(7) Child Disability Payment may only be given as money, except as provided for by paragraph (8).

(a) 1975 c.14.

(8) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), or under regulation 34 (liability for assistance given in error), the individual's Child 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.

(9) For the purpose of paragraph (8), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

PART 11

Provision of vehicles

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

31.—(1) Where—

- (a) the higher rate mobility component of Child Disability Payment 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 with the consent of the individual, 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.

(4) Short-term assistance within the meaning of regulation 17 and Part 2 of the schedule is payable in respect of an individual's liability under the agreement mentioned in paragraph (1) where—

- (a) the individual was entitled to the higher rate of the mobility component,
- (b) that entitlement has been ended as a result of a determination mentioned in paragraph 1(1)(a) of Part 2 of the schedule, and
- (c) the agreement mentioned in paragraph (1)—
 - (i) commenced before the date of, or
 - (ii) was extended pending an outcome of a redetermination or appeal against, that determination.

PART 12

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

32.—(1) Where an individual—

- (a) is under 18 years of age,
- (b) is ordinarily resident in another part of the United Kingdom,

- (c) transfers to become ordinarily resident in Scotland, and
- (d) is paid Disability Living Allowance as at the date of the transfer,

the Scottish Ministers are to make a determination without application that the individual is entitled to the equivalent components and rates of Child Disability Payment as Disability Living Allowance payable at the end of the 13-week period beginning with the date of the transfer.

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

(3) In this regulation and regulation 33, “the date of the transfer” is the date when the transfer takes place as notified by the individual to the Scottish Ministers whether the notification takes place either before or after the date of the transfer.

Individuals in respect of whom Child Disability Payment is paid at the time of transferring to another part of the United Kingdom

33.—(1) Where the Scottish Ministers are notified that an individual in respect of whom Child Disability Payment is paid has transferred or is to transfer to become ordinarily resident in another part of the United Kingdom, payment of Child Disability Payment and short-term assistance (if applicable) is to cease at the end of the period of 13 weeks beginning with the date of the transfer.

(2) Where the Scottish Ministers receive notification mentioned in paragraph (1), they must make a determination of entitlement without application that Child Disability payment is to be paid until the end of the 13-week period.

(3) The Child Disability Payment paid to an individual mentioned in paragraph (1) for the 13-week period is for the same components and at the same rates paid immediately before the date of transfer.

(4) Where before the end of the 13-week 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 notification mentioned in paragraph (1) is to be treated as not having been made.

(5) The Scottish Ministers are to make a determination without application where they—

- (a) are notified that an individual has transferred to become ordinarily resident in another part of the United Kingdom after the end of the 13-week period, and
- (b) have previously made a determination of the individual’s entitlement to Child Disability Payment or short-term assistance.

PART 13

Liability for over payment

Liability for assistance given in error

34.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), or under regulation 26, the individual’s payment of Child Disability Payment or short-term assistance or both 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 (2), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

(3) For the avoidance of doubt, the individual’s liability under sub-paragraph (1) is limited to the difference in value between—

- (a) the assistance that was given, and

- (b) the assistance (if any) that would have been given had the error not been made.
- (4) If the assistance was given in a form other than money, its value for the purposes of this paragraph is what giving it cost the Scottish Ministers (excluding any administration costs).
- (5) In this regulation, references to an error are to—
 - (a) an error in the performance of a function conferred by virtue of this Part, including a determination made—
 - (i) correctly but on the basis of—
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong.
 - (b) a new determination not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

Determination to effect a deduction decision

35.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Child Disability Payment or short-term assistance or both (without receiving an application) where the circumstances in sub-paragraphs (2) and (3) apply.

- (2) This sub-paragraph applies where regulation 34—
 - (a) allows Child Disability Payment or short-term assistance to be given to the individual by way of deduction, or
 - (b) previously allowed Child Disability Payment or short-term assistance to be given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.
- (3) This sub-paragraph applies where the Scottish Ministers have decided to—
 - (a) vary the amount of Child Disability Payment or short-term assistance to be given by way of deduction (including introducing a deduction, where the full amount of Child Disability Payment or short-term assistance was previously given as money),
 - (b) vary any period for which the individual’s Child Disability Payment or short-term assistance 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 Child Disability Payment or short-term assistance in the form of money.
- (4) The Scottish Ministers are to make a determination (without receiving an application) where an individual who is receiving Child Disability Payment or short-term assistance by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—
 - (a) withdraws their agreement to their Child Disability Payment or short-term assistance being given by way of deduction,
 - (b) wishes the Scottish Ministers to increase the amount of their Child Disability Payment or short-term assistance that is given by way of deduction,
 - (c) wishes the Scottish Ministers to decrease the amount of their Scottish child 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 sub-paragraph (3)(b).
- (5) Where a determination is made in pursuance of sub-paragraph (1), references in these Regulations to the day on which the application is made are to be read as references to the day on which the determination is made.

PART 14

Consequential amendment

Consequential amendment

36. The amendments specified in Part 2 of the schedule have effect.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

PART 1

Regulation 17

Short-term assistance

Entitlement to short-term assistance

1.—(1) Subject to paragraph (2), an individual who received Child Disability Payment 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 which has the effect that the individual—
 - (i) is no longer entitled to Child Disability Payment, or
 - (ii) is entitled to a lower rate of either component or a lower amount of both components of Child Disability Payment,
- (b) the individual's entitlement to Child Disability Payment is under review within the meaning of paragraph 1(2) of schedule 10 of the 2018 Act, and
- (c) 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 13-week period beginning with the date of the transfer in accordance with regulation 33 (individuals in respect of whom Child Disability Payment 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 Child Disability Payment as a result of a determination made that—

- (a) under regulation 24(1)(a)(ii), or
- ~~(b)~~ that in the case of an individual who has transferred to Scotland from another part of the United Kingdom in accordance with regulation 32 (individuals 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.

(3) An individual to whom regulation 11(2) or 13(2) applies is not entitled to short-term assistance in respect of the care component of Child Disability Assistance.

(4) An individual must make an application for short-term assistance.

(5) Disregarding the date when an application mentioned in paragraph (1) is made, 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, 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), on the day that notice is accepted,
- (c) where 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, or
- (d) a request is made under section 48(1)(b) of the 2018 Act (deadline for appealing) for permission to appeal, on the day that request is made.

Value and form

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

(2) The form in which the short term assistance is given is the same as that given under the earlier determination.

End of entitlement

3.—(1) Entitlement to short-term assistance ends on the day—

- (a) a determination is cancelled under section 26(2) of the 2018 Act (individual’s right to stop receiving assistance),
- (b) a determination 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 decision under section 49 of the 2018 Act (First-tier Tribunal’s power to determine entitlement), or
- (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.

(2) Where a decision of the First-tier Tribunal for Scotland mentioned in paragraph (1)(c) is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014—

- (a) at the instance of the Tribunal, short-term assistance will continue to be paid to an individual who is entitled to it under paragraph 1, or
- (b) at the request of an individual or the Social Security Scotland Agency, the individual may make an application for short-term assistance,

(3) The Scottish Ministers make a determination under regulation 24.

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

PART 2

Regulation 36

Consequential amendment

Consequential amendment

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

(2) In section 70(2) (invalid care allowance), after “enhanced rate” insert “or disability assistance by virtue of entitlement to the care component at the middle or highest rate under regulations made under section 31 of the Social Security (Scotland) Act 2018”.

(a) 1992 c.4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 provides an overview of arrangements for payment of disability assistance for children and young people (“Child Disability Payment”).

Part 3 deals with eligibility for the assistance on account of having a disability, including residence and presence conditions, care component criteria and mobility requirements.

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, legal custody or hospital.

Part 6 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 7 deals with the making of applications and payments and duration of eligibility.

Part 8 deals with reconsideration of entitlement, where an award of assistance has already been made and is being revisited.

Part 9 deals with procedural matters, including time periods for dealing with requests for redetermination of entitlement.

Part 10 deals with the rate and form of the assistance.

Part 11 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 12 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 13 deals with deductions from the assistance to meet a liability to the Scottish Ministers.

Part 14 makes provision for a consequential amendment to the Social Security Contributions and Benefits Act 1992.