

*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.*

---

DRAFT SCOTTISH STATUTORY INSTRUMENTS

---

**2022 No.**

**SOCIAL SECURITY**

The Disability Assistance for Working Age  
People (Transitional Provisions and Miscellaneous  
Amendment) (Scotland) Regulations 2022

*Made* - - - - 2022

*Coming into force* - - 29th August 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 31(2), 36(2), 43(5), 52 and 95 of the Social Security (Scotland) Act 2018<sup>(1)</sup> and all other powers enabling them to do so.

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.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security 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.

**PART 1**

**Introductory and interpretation**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 and come into force on 29 August 2022.

(2) These Regulations extend to Scotland only.

---

(1) 2018 asp 9 (“the 2018 Act”), amended by the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). Schedule 5 of the 2018 Act makes provision about the exercise of powers under section 31. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2020 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

## Interpretation

### 2. In Parts 2 and 3 of these Regulations—

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

“the ADP Regulations” means the Disability Assistance for Working Age People (Scotland) Regulations 2022(2),

“Adult Disability Payment” means disability assistance for adults given in accordance with the ADP Regulations,

“date of transfer” means the date when a transferring individual’s entitlement to Adult Disability Payment begins by virtue of a transfer determination,

“daily living component of Adult Disability Payment” has the same meaning as “daily living component” in regulation 2 of the ADP Regulations,

“Disability Living Allowance” means a disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(3),

“mobility component of Adult Disability Payment” has the same meaning as “mobility component” in regulation 2 of the ADP Regulations,

“notice of intention to transfer” means the notice required by regulation 3,

“relevant individual” means an individual who—

(a) has an award of Disability Living Allowance who appears to the Scottish Ministers to be likely to be eligible for Adult Disability Payment—

(i) who has—

(aa) notified a change of circumstances in terms of regulation 32 of the Social Security (Claims and Payments) Regulations 1987(4), or

(bb) made a claim for personal independence payment in terms of regulation 4 of the Personal Independence Payment (Transitional Provisions) Regulations 2013(5),

(ii) whose award is due to be renewed, or

(iii) has requested to be transferred to Adult Disability Payment after 29 August 2022,

(b) was aged 16 years old or older but under 65 years old on 8 April 2013,

(c) is—

(i) ordinarily resident in Scotland, or

(ii) someone to whom regulation 15(3) (residence and presence conditions), regulation 17(1) (serving members of Her Majesty’s forces, civil servants and their family members) or regulation 20(2) of the ADP Regulations (persons residing outside the United Kingdom to whom a relevant EU Regulation applies) applies,

“review determination” means the determination required by regulation 12(1),

“transfer determination” means the determination required by regulation 4(1),

“transferred individual” means an individual whose entitlement to Adult Disability Payment is given under a transfer determination, and

“transferring individual” means an individual on whom the Scottish Ministers have served a notice of intention to transfer in accordance with regulation 3.

---

(2) S.S.I. 2022/54.

(3) 1992 c. 4. Section 71 was amended by section 67(1) of the Welfare reform and Pensions Act 1999 (c. 30).

(4) S.I. 1987/1968, amended by S.I. 1995/2303, S.I. 1999/3108, S.I. 2002/3019, S.I. 2003/1050, S.I. 2003/1632, S.I. 2003/2274, S.I. 2003/3209, S.I. 2008/1554, S.I. 2008/1599, S.I. 2012/824 and S.I. 2017/1015.

(5) S.I. 2013/387. Regulation 4 was substituted by S.I. 2013/2689.

## PART 2

### Transfer to Adult Disability Payment

#### **Notice of intention to transfer to Adult Disability Payment**

3.—(1) The Scottish Ministers are to notify each relevant individual of their intention to transfer that individual’s entitlement to disability assistance from an entitlement to Disability Living Allowance to an entitlement to Adult Disability Payment.

(2) Notice under paragraph (1) must—

(a) be given in a way that leaves the relevant individual with a record of the information which they can show to, or otherwise share with, others, and

(b) inform the relevant individual that—

(i) they have been identified as a relevant individual for the purposes of transfer to Adult Disability Payment,

(ii) the Scottish Ministers will make a determination, without receiving an application, to transfer the individual’s entitlement to Disability Living Allowance to an entitlement to Adult Disability Payment within a period to be specified within the notice (the individual will be notified when the transfer determination is made and informed about their award and start date of Adult Disability Payment),

(iii) the individual’s award of Disability Living Allowance will cease—

(aa) immediately before the award of Adult Disability Payment begins, or

(bb) where a transferring individual was paid Disability Living Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Adult Disability Payment begins,

(iv) except where the individual is subject to the special rules for terminal illness in regulation 9, the Scottish Ministers will make a review determination of the individual’s entitlement to Adult Disability payment within 12 months of the date of the notice.

(3) Where a notice under paragraph (1) is given in error where the individual is neither—

(a) ordinarily resident in Scotland, nor

(b) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in regulation 4(1) does not apply.

(4) Where paragraph (3) applies in respect of an individual and a transfer determination has not been made, the Scottish Ministers are to notify the individual that the duty on the Scottish Ministers in regulation 4(1) does not apply.

(5) In paragraph (3), “sufficient” means a link to Scotland that is sufficiently close that regulation 15(3) or 20(2) of the ADP Regulations would be incompatible with the applicable agreement mentioned in either of those regulations, if the relevant individual were not entitled to Adult Disability Payment,

#### **Transfer determination without application of entitlement to Adult Disability Payment**

4.—(1) The Scottish Ministers are to make a determination in respect of a transferring individual, without receiving an application, of that individual’s entitlement to Adult Disability Payment.

(2) A transfer determination must be made on the assumption that the transferring individual—

- (a) other than Disability Living Allowance, is not entitled to any of the benefits set out in regulation 4, and
- (b) meets the residence and presence conditions set out in regulations 15 to 21, of the ADP Regulations.

(3) Entitlement to Adult Disability Payment under a transfer determination begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act.

- (4) The transfer determination is to be made on the basis of—
  - (a) such information as the Scottish Ministers have received from the Secretary of State for Work and Pensions in respect of the transferring individual's entitlement to Disability Living Allowance, and
  - (b) any other information available to the Scottish Ministers that appears to them to be relevant.
- (5) Subject to regulation 9, a transfer determination must be made in accordance with regulation 5.
- (6) The transfer determination does not need to be made on the basis of the information mentioned in paragraph (4)(b) where—
  - (a) the individual—
    - (i) before receiving notice under regulation 3(1), reported a change of circumstances to the Secretary of State for Work and Pensions, which has not been taken into account for the individual's entitlement to Disability Living Allowance, or
    - (ii) has, since receiving a notice under regulation 3(1), notified a change of circumstances to the Scottish Ministers, and
  - (b) following the transfer determination, a review determination is to be made.
- (7) A determination under paragraph (1)—
  - (a) may be made on the assumption that whatever can be discerned about the transferring individual's circumstances from the information mentioned in paragraph (4) remains accurate on the date on which the determination is made,
  - (b) must be made no later than the end of the period specified within the notice of intention to transfer unless the Scottish Ministers have—
    - (i) good reason to extend that period,
    - (ii) agreed the period for extension with the Secretary of State for Work and Pensions, and
    - (iii) notified the transferring individual of the extension and the reason for it.

### **Entitlement to Adult Disability Payment**

5.—(1) For the purposes of a transfer determination, an individual may be awarded the daily living component at the transitional rate specified in regulation 6(1) instead of being awarded that component at the standard or the enhanced rate in accordance with regulation 5(2) or (3) of the ADP Regulations.

- (2) A transfer determination is to be made on the basis that a transferring individual who had been entitled to the—
  - (a) lowest rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the transitional rate of the daily living component of Adult Disability Payment,

- (b) middle rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the standard rate of the daily living component of Adult Disability Payment,
- (c) highest rate of the care component of Disability Living Allowance immediately prior to the date of transfer is entitled to the enhanced rate of the daily living component of Adult Disability Payment,
- (d) lower rate of the mobility component of Disability Living Allowance immediately prior to the date of transfer is entitled to the standard rate of the mobility component of Adult Disability Payment,
- (e) higher rate of the mobility component of Disability Living Allowance immediately prior to the date of transfer is entitled to the enhanced rate of the mobility component of Adult Disability Payment.

(3) A transferring individual mentioned in paragraph (2)(e) is to be treated as though they have obtained the maximum points for each activity listed in column 1 of the table in Part 3 of schedule 1 of the ADP Regulations.

#### **Amount and form and time of payment of Adult Disability Payment**

6.—(1) The weekly rate of payment of the daily living component of Adult Disability Payment is, where the transferring individual is entitled to the transitional rate, £24.45.

(2) Where an award of Adult Disability Payment is made to a transferring individual, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment—
  - (i) 4 weekly in arrears,
  - (ii) weekly in advance, or
  - (iii) where the Scottish Ministers consider that it would be unjust not to do so, at such intervals as may be specified in the notice of determination.

#### **Effect of determination on entitlement to Disability Living Allowance**

7.—(1) Where a transfer determination is made that the transferring individual is entitled to Adult Disability Payment, the transferring individual's entitlement to Disability Living Allowance will cease on—

- (a) the date their entitlement to Adult Disability Payment begins,
- (b) where a transferring individual was paid Disability Living Allowance one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Adult Disability Payment begins, or
- (c) where regulation 9 applies, the date their entitlement to Adult Disability Payment would have begun had regulation 9(2) not applied to set an earlier date of entitlement.

(2) Where paragraph (1)(b) applies—

- (a) section 71(7) (disability living allowance) of the Social Security Contributions and Benefits Act 1992<sup>(6)</sup>, and
- (b) regulation 4(d) of the ADP Regulations (entitlement to other benefits),

do not apply in respect of the first week of entitlement to Adult Disability Payment.

---

(6) 1992 c. 4, relevantly amended by S.I. 2022/335.