

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

CONSULTATION RESPONSE: ADULT DISABILITY PAYMENT (ADP) REGULATIONS

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of the report is to inform Council Executive of the Scottish Government consultation on the draft Adult Disability Payment Regulations (ADP) which commenced on 21 December and to agree a response to be returned by 15 March 2021.

B. RECOMMENDATION

It is recommended that the Council Executive approves the proposed consultation response, as set out in Appendix 2, to be submitted on behalf of West Lothian Council.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Focusing on our customers' needs; being honest, open and accountable; providing equality of opportunities; making best use of our resources; working in partnership
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Reducing inequalities and poverty are key priorities set out in both the Corporate Plan 2018/19 – 2022/23 and in the Community Planning Partnership Local Outcome Improvement Plan 2013 – 2023.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	None.
V	Relevance to Single Outcome Agreement	We live longer, healthier lives; We have tackled significant inequalities in West Lothian society; We have improved the life chances for people at risk; We take pride in a strong, fair and inclusive society
VI	Resources - (Financial, Staffing and Property)	None.
VII	Consideration at PDSP	Due to timescales, it was not possible to

consider the report at PDSP. The draft paper was circulated to Partnership and Resources PDSP members for comment by 15 February. No comments were received.

VIII Other consultations

Consultation circulated to key stakeholders through the council's Anti-Poverty Service, the Anti-Poverty Practitioner's Network.

D. TERMS OF REPORT

D1 Background

The Social Security (Scotland) Act 2018 conferred upon the Scottish Government the powers to provide non-means tested disability benefits equivalent to Personal Independence Payment (PIP) and Disability Living Allowance (DLA), which are currently administered by Department of Work and Pensions on behalf of the UK government.

As a consequence of this, in March 2019, the Scottish Government undertook a two-month consultation (The Disability Assistance in Scotland Consultation) on their proposals for a new Disability Assistance benefit which was to replace PIP and DLA for people of working age in Scotland. The outcome of this was published in October 2019 and since then the Scottish Government has been involved in a period of development of the benefit and policy surrounding it.

This consultation is concerned with whether the draft regulations meet these policy aims and invites comment on each section of the legislation.

In the main, the draft regulations for Adult Disability Payment in Scotland are broadly the same eligibility criteria provided by the Personal Independence Payment framework. There are, however, some significant differences including:

1. The removal of set award end dates, instead focusing on rolling award periods and the introduction of 'light touch' reviews for those claimants whose condition is unlikely to improve.
2. Introduction of Short-Term Assistance to protect income for claimants pending appeal where an award is reduced or stopped following a re-determination.
3. Extension of the time limit to request a re-determination to 42 calendar days in order to allow claimants to access appropriate support with this process
4. Changes to special rules for terminally ill claimants, removing the requirement that death must be reasonably expected within six months and instead using the clinical judgement of the claimant's health professionals to enable a determination on whether they are terminally ill.
5. Activities are largely the same as the PIP criteria, however some descriptors have been re-worded to take account of case law and guidance.

D2 Consultation

The consultation opened on 21 December 2020 and closes on 15 March 2021. The consultation questions have been circulated to the council's Anti-Poverty Service, the Anti-Poverty Practitioners' Network and Advice Shop Welfare Rights Officers. A response to the consultation has been drafted taking account of this feedback and

this has been circulated to Partnership and Resources PDSP members for comment. No comments were received.

In undertaking this consultation, the Scottish Government hopes to gather views on whether the draft regulations will achieve the aims of Adult Disability Payment, and is also seeking feedback on certain policy approaches to ensure they have identified the best solutions and that they are in line with the Scottish Social Security principles of dignity, fairness and respect.

Overall, the draft regulations in respect of Adult Disability Payment (ADP) do meet the policy aims of Social Security Scotland, with one exception relating to the proposed wording in relation to the Mobility Activities contained within Schedule 1 of the draft regulations (See Appendix 1).

The removal of compulsory face-to-face assessments to determine a claimant's entitlement to benefit is widely regarded as a positive step and marks a significant departure from the current system used to administer Personal Independence Payment (PIP) which this benefit will replace. The same is also true with regards to the changes to the "special rules criteria" for terminally ill claimants where the requirement that death may be reasonably expected within six months has also been removed.

Where concern was expressed, however, is in relation to the descriptors relating to Mobility Activity 1, contained in Schedule 1 of the draft regulations. Here, the regulations do not reflect the policy intent as they contain references to Department of Work and Pensions legislation which was deemed unlawful by the High Court. The words, "*For reasons other than Psychological distress*" included in Descriptors c, d and f of the Activity were found to be discriminatory against claimants with mental health problems. The views of stakeholders were that these should be removed from the regulations as they neither reflect policy nor the Scottish Social Security principles. This point is covered in question 31 in the proposed response.

E. CONCLUSION

Responses have been collated from anti-poverty practitioners in West Lothian and experienced staff within the Anti-Poverty Service. These key stakeholders have provided valuable feedback taking account of how the legislation proposed impacts on some of the most vulnerable members of our communities.

The Council Executive is asked to agree the submission to the consultation as set out in Appendix 2.

F. BACKGROUND REFERENCES

<https://www.gov.scot/publications/consultation-adult-disability-payment/>

Appendices/Attachments: Appendix 1 Draft Regulations for Adult Disability Payment

Appendix 2: Response to the Social Security Consultation

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23 February 2021

Appendix 2: West Lothian draft response to consultation on Adult Disability Payment

Part 1: Introductory and Interpretation (regulations 1 and 2)

Q 1: Do you agree the regulations reflect this policy intent? **Yes**

Q 2: If you have any further comments please provide them here.
none

Part 2: Disability Assistance for Working Age People Overview (regulation 3)

Q 3: Do you agree the regulations reflect this policy intent? **Yes**

Q 4: If you have any further comments please provide them here.
none

Daily Living Component and Mobility Component (regulations 4 and 5)

Q 5: Do you agree the regulations reflect this policy intent? **Yes**

Q 6: If you have any further comments please provide them here.
none

Determination of ability to carry out activities (regulation 6)

Scoring for daily living and mobility activities (regulations 7 and 8)

Scoring: further provision (regulation 9)

Q 7: Do you agree the regulations reflect this policy intent? **Yes**

Q 8: If you have any further comments please provide them here.
none

The required period condition: daily living component and mobility component (regulation 10 and 11)

The relevant date (regulation 12)

The relevant date: after an interval (regulation 13)

Q 9: Do you agree the regulations reflect this policy intent? **Yes**

Q 10: If you have any further comments please provide them here.
None

Residence and presence conditions (regulation 14)

Absence from the United Kingdom (regulation 15)

Absence from the United Kingdom including medical treatment (regulations 16)

Absence from the United Kingdom in special cases (regulation 17)

Serving members of Her Majesty's forces and their family members – further provision (regulation 18)

Persons habitually resident in the United Kingdom (regulation 19)

Persons habitually resident in outside of the UK (regulation 20)

Refugees (regulation 21)

Q 11: Do you agree the regulations reflect this policy intent? **Yes**

Q 12: If you have any further comments please provide them here.
None

Age Criteria (regulation 22) Persons of pensionable age: exceptions (regulation 23)

Adult disability payment after an interval and after reaching the relevant age (regulation 24)

Determination of an award after the person has reached the relevant age (regulation 25)

Q 13: Do you agree the regulations reflect this policy intent? **Yes**

Q 14: If you have any further comments please provide them here.
none

Terminal Illness (regulation 26)

Q 15: Do you agree the regulations reflect this policy intent? **Yes**

Q 16: If you have any further comments please provide them here.
none

Care home residents (regulation 27)

Hospital in-patients (regulation 28)

Exceptions: care homes and hospitals (regulation 29)

Legal Detention (regulation 30)

Periods of residence (regulation 31)

Payment of Adult Disability Payment between two periods of residence (regulation 32)

Q 17: Do you agree the regulations reflect this policy intent? **Yes**

Q 18: If you have any further comments please provide them here.
none

Rate of Adult Disability Payment and Making Payments (regulation 33)

Making Payments (regulation 34)

When an application is treated as made and beginning of entitlement to assistance (regulation 35)

Time of Payment (regulation 36)

Continuing Eligibility (regulation 37)

Q 19: Do you agree the regulations reflect this policy intent? **Yes**

Q 20: If you have any further comments please provide them here.
none

Part 11: Qualifications and Experience Necessary to Carry out Assessments (regulation 38)

Q 21: Do you agree the regulations reflect this policy intent? **Yes**

Q 22: If you have any further comments please provide them here.
None

Consideration of entitlement after specified period (regulation 39)

Other situations requiring a determination without an application (regulation 40)

Determination following official error – underpayments (regulation 41)

Determination following error – overpayments (regulation 42)

When changes in entitlement take effect (regulation 43)

Q 23: Do you agree the regulations reflect this policy intent? **Yes**

Q 24: If you have any further comments please provide them here.
none

Periods in respect of a re-determination request (regulation 44)

Q 25: Do you agree the regulations reflect this policy intent? **Yes**

Q 26: If you have any further comments please provide them here.
None

Part 14: Provision of vehicles (regulation 45)

Q 27: Do you agree the regulations reflect this policy intent? **Yes**

Q 28: If you have any further comments please provide them here.
none

Liability for assistance given in error (regulation 46)

Determination to effect a deduction decision (regulation 47)

Q 29: Do you agree the regulations reflect this policy intent? **Yes**

Q 30: If you have any further comments please provide them here.

None

Schedule 1 – Adult Disability Assistance Determination

Q 31: If you have any comments Schedule 1 please provide them here.

The wording of the regulations in Schedule 1 in respect of Mobility Activity 1, do not reflect the policy intent. In the outline to the Regulations in Annex B, it is stated at Para 2 that *“Specific terms defined through case law have been added here to ensure that existing Personal Independence Payment case law is reflected in the interpretation of these regulations”*. However, this is not the case as the as Mobility Activity 1, Descriptors c, d and f reflect an incorrect position.

The wording of these Descriptors (“For reasons other than Psychological distress”) was deemed unlawful by the High Court in case **[2017] EWHC 3375 (Admin)**, with the Judge referring to them as being ***“blatantly discriminatory against those with mental health impairments”***.

Additionally, the proposed wording of mobility descriptor 1(b) *‘Needs **the presence or prompting of another person** to be able to undertake any journey to avoid overwhelming psychological distress to the individual’* represents a departure from the established scope of this activity under the PIP regulations that may in fact disadvantage the claimant. Under the PIP regulations, a claimant would be awarded 4 points if they require prompting to undertake any journey to avoid overwhelming distress. If the claimant required the presence of another person, even a passive presence, this would attract 10 or 12 points under descriptors 1(d) or 1(f) respectively. This position is confirmed in [2018] UKUT 339 (AAC) in which Judge Hemingway concludes that the [passive presence of another person to enable claimant to follow a journey can be sufficient to satisfy mobility descriptors 1d or 1f.](#)

In the introduction to the consultation it is stated *“[W]e has consistently communicated that when Adult Disability Payment is first delivered, it will be with largely the same eligibility criteria as provided by the current Personal Independence Payment framework and this is reflected in these draft regulations. At the same time, this has not limited our aspirations and Adult Disability Payment will be delivered in-keeping with our values of dignity, fairness and respect”*.

Implementing the regulations in their current format in relation to Mobility Activity 1 of Schedule 1 does not reflect either the current Personal Independence framework, or the values as they have been found discriminatory against a group of disabled claimants.

Schedule 2 – Members of Her Majesty's Forces: Excluded Persons

Q 32: If you have any comments on Schedule 2 please provide them here.

none

Q 33: If you have any comments about the proposed review of Adult Disability Payment please provide them here.

none

Q 34: If you have any comments about the impact assessments please provide them here.

none

Q 35: If there is anything else you would like to tell us about the regulations, impact assessments or Adult Disability Payment in general, please do so here

none

Consultation on Adult Disability Payment

Annex C: Draft Disability Assistance for Working Age People regulations

DRAFT REGULATIONS FOR CONSULTATION

The Disability Assistance for Working Age People (Scotland) Regulations

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PART 1 — INTERPRETATION

PART 2 — DAILY LIVING ACTIVITIES

PART 4 — MOBILITY ACTIVITIES

SCHEDULE 2 — MEMBERS OF HER MAJESTY’S FORCES: EXCLUDED PERSONS

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(3), 31(2), 36(2), 41(4)(a), 43(5), 51, 52 and 95 of the Social Security (Scotland) Act 2018 (1), and all other powers enabling them to do so.

(1) 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.

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

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

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

PART 1

Introductory and Interpretation

Citation and Commencement

1.—(1) These regulations may be cited as the Disability Assistance for Working Age People (Scotland) Regulations .

(2) These regulations come into force for the purposes of Part X (pilot scheme) and Part X of schedule X on [date] and for all other purposes on [date].

Interpretation

2.In these Regulations—

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

“aid or appliance” —

(a) means —

(i) any object or device which a client needs to perform a function; or

(ii) any object or device which improves, provides or replaces the individual’s impaired physical or mental function, and

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

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

(d) includes a prosthesis;

“Armed Forces Independence Payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

“assessment” means an assessment in terms of section 54 of the 2018 Act;

“Child Disability Payment” means Child Disability Payment in terms of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;

“component” means the daily living component or mobility component of Adult Disability Payment;

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

“determination” or “determination of entitlement” means a determination of an individual’s entitlement to assistance under section 37 or 49 of the 2018 Act,

“Disability Living Allowance” means disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(2);

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(3) but does not include detention under—

(2)

(3) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).

(e) section 59A of that Act, or

(b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴⁾;

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

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

“Personal Independence Payment” means the disability benefit paid in accordance with section 77 of the Welfare Reform Act 2012;

“relevant date” means the date under regulations 12 and 13;

“previous award” means an award of either or both components to which an individual has ceased to be entitled;

“recipient” means the individual to whom Adult Disability Payment is paid,

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

“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⁽⁵⁾.

PART 2

Disability Assistance for Working Age People

Overview

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

- (a) the daily living component criteria in regulation 4;
- (b) the mobility component criteria in regulation 5;
- (c) the required period condition in regulations 10 and 11;
- (d) the residence and presence conditions in regulation 14, and
- (e) the age criteria in regulation 22.

(2) Paragraph (1) is subject to the special rules relating to age found in Part 6 and the special rules relating to terminal illness found in Part 7 of these Regulations.

(3) Adult Disability Payment is to consist of a daily living component and a mobility component.

(4) An individual’s entitlement to Adult Disability Payment may be an entitlement to either component or both of them.

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

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

(7) An individual to whom regulation 20 applies is not entitled to the daily living component for a period, unless during that period—

⁽⁴⁾ 2003 asp 13.
⁽⁵⁾ 2019/C 384 I/01.

- (a) 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 relevant EU regulations as defined in regulation 20, or
- (b) in terms of regulation 20(3)(a)(ii), the United Kingdom is competent for payment of long term care benefits to the individual.

PART 3

Eligibility: Daily Living Component and Mobility Component

Daily Living Component

- 4.—**(1) An individual is entitled to the daily living component at the standard rate if—
- (a) the individual’s ability to carry out daily living activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) An individual is entitled to the daily living component at the enhanced rate if—
- (a) the individual’s ability to carry out daily living activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “daily living activities” are the activities set out in column 1 of the table in Part 2 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(1)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(1)(b).
- (4) Whether a person has limited or severely limited ability to carry out daily living activities is to be determined in accordance with regulation 7.

Mobility Component

- 5.—**(1) An individual is entitled to the mobility component at the standard rate if—
- (a) the individual’s ability to carry out mobility activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) A individual is entitled to the mobility component at the enhanced rate if—
- (a) the individual’s ability to carry out mobility activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “mobility activities” are the activities set out in column 1 of the table in Part 3 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(2)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(2)(b).
- (4) Whether a person has limited or severely limited ability to carry out mobility activities is to be determined in accordance with regulation 8.

Determination of ability to carry out activities

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

Scoring for daily living activities

- 7.**—(1) The score an individual obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.
- (3) For the purposes of regulation 4, an individual has —
- (a) limited ability to carry out daily living activities where they obtain a score of at least 8 points and no more than 11 points in relation to daily living activities; and
 - (b) severely limited ability to carry out daily living activities where they obtain a score of at least 12 points in relation to disability living activities.

Scoring for mobility activities

- 8.**—(1) The score an individual obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever

of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.

- (3) For the purposes of regulation 5, an individual has —
- (a) limited ability to carry out mobility activities where they obtain a score of at least 8 points and no more than 11 points in relation to mobility activities; and
 - (b) severely limited ability to carry out mobility activities where they obtain a score of at least 12 points in relation to mobility activities.

Scoring: further provision

9.—(1) The descriptor which applies to an individual in relation to each activity in the tables referred to in regulations 7(2) and 8(2) is—

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

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

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

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

- (a) in the case where entitlement to adult disability payment falls to be determined, the period of 13 weeks ending with the relevant date together with—
 - (i) in relation to an application after an interval for the purpose of regulation 13 the period of 39 weeks beginning with the date on which that application is made;
 - (ii) in relation to any other application, the period of 39 weeks beginning with the day after the relevant date.
- (b) in the case where adult disability payment has been awarded to an individual—
 - (i) during the period of 13 weeks following a determination of entitlement under an application for the purpose of regulation 13, the period of 13 weeks ending with the relevant date together with, for each day of the award, the period of 39 weeks beginning with the day after that date;
 - (ii) in any other case, for each day of the award, the period of 13 weeks ending with that date together with the period of 39 weeks beginning with the day after that date.

PART 4

Required Period Condition

Required Period Condition: daily living component

10.—(1) An individual meets the required period condition for the purposes of regulation 4(1) (daily living component at the standard rate) where—

- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out daily living activities.
- (2) An individual meets the required period condition for the purposes of regulation 4(2) (daily living component at the enhanced rate) where—
- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out daily living activities.

Required Period Condition: mobility component

11.—(1) An individual meets the required period condition for the purpose of regulation 5(1) (mobility component at the standard rate) where—

- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out mobility activities; and
- (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out mobility activities.

(2) An individual meets the required period condition for the purposes of regulation 5(2) (mobility component at the enhanced rate) where—

- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out mobility activities; and
- (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out mobility activities.

The relevant date

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

- (a) where the individual has made an application for adult disability payment which has not been determined, the date of that application or, if later, the earliest date in relation to which, if the individual had been assessed in relation to their ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 13 weeks, it is likely that the Scottish Ministers would have determined at that time that the individual has limited ability or, as the case may be, severely limited ability to carry out those activities; and
- (b) where the individual has an award of either or both components, each day of that award.

The relevant date: Adult disability payment after an interval

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

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

- which ended not more than 2 years before the date on which the new application is made;
- (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which the individual is entitled (or would be entitled if they met the required period condition) under the new application; and
 - (d) the Scottish Ministers determine that the entitlement under the new application results from—
 - (i) substantially the same physical or mental health condition or conditions for which the previous award was made; or
 - (ii) a new physical or mental health condition or conditions which developed as a result of a condition for which the previous award was made.
- (2) In relation to determination of entitlement under the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to the new application as if, for the words ‘the relevant date’ there were substituted ‘the date on which the new application for adult disability payment is made’.
- (3) Where an individual is awarded either or both components under the new application, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 13 weeks following the date of the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to that award as if, for the words ‘the relevant date’ there were substituted ‘each day of the award’.
- (4) For the purposes of this regulation—
- (a) an award of Personal Independence Payment under paragraph (1)(b)(ii) is to be treated as though it were an award of Adult Disability Payment, and
 - (b) that award may have been made whilst the person was ordinarily resident in—
 - (i) Scotland, or
 - (ii) any other part of the United Kingdom.
- (5) This regulation is subject to regulation 24.

PART 5

Residence and Presence Conditions

Residence and presence conditions

- 14.** An individual satisfies the residence and presence conditions if on any day that individual—
- (a) is ordinarily resident in Scotland,
 - (b) is habitually resident in the Common Travel Area,
 - (c) is not a person to whom section 115(9) of the Immigration and Asylum Act 1999⁽⁶⁾ applies, within the meaning of section 115(3) of that Act for the purposes of entitlement to Adult Disability Payment, and
 - (d) has been present in the United Kingdom for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day.

⁽⁶⁾ 1999 c.33

Absence from United Kingdom

15.—(1) Where an individual is temporarily absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d) for the first 13 weeks of absence.

(2) The individual is temporarily absent if, at the beginning of the period of absence, their absence is unlikely to exceed 52 weeks.

(3) 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,
- (b) will meet that condition, unless there is a change of circumstances, on a date (“the later date”) not later than 13 weeks after the application was received, and
- (c) does meet that condition on the later date,

the Scottish Ministers may make a determination that the individual is entitled to Adult Disability Payment from the later date .

Absence from United Kingdom to receive medical treatment

16.—(1) Where the individual is temporarily absent from the United Kingdom, they are treated as present in United Kingdom for the purposes of regulation 14(d) for the first 26 weeks of that absence, where—

- (a) their absence is solely in connection with arrangements made for their medical treatment for a disease or physical or mental health condition before the individual left the United Kingdom; and
- (b) the arrangements referred to in paragraph (1)(a) relate to medical treatment—
 - (i) outside the United Kingdom;
 - (ii) during the period whilst 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.

(2) In this regulation, “temporarily absent” has the same meaning as in regulation 15(2).

Absence from United Kingdom in special cases

17.—(1) Where an individual is absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d)) where—

- (a) they are abroad in the capacity of—
 - (i) a member of Her Majesty’s forces;
 - (ii) an aircraft worker; or
 - (iii) a mariner; or
- (b) they are in employment prescribed or the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(7) in connection with continental shelf operations; or
- (c) they are living with a person mentioned in paragraph (1)(a)(i) and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step mother of that person,

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

(2) In this regulation and in regulation 18, “a member of Her Majesty’s forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006(8), other than a person who is specified in Schedule 2, who is—

- (a) over the age of 16; and
- (b) not absent on desertion.

(7)
(8)

(3) In this regulation—

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

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

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is 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—

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

but does not include a person who is in employment as a member of Her Majesty’s forces.

Serving members of Her Majesty’s forces and their family members – further provision

18.—(1) An individual is treated as meeting the residence and presence conditions set out in regulations 14(a), (b) and (d) for any period where that individual—

- (a) is outside of Scotland or the Common Travel Area, or both, in their capacity as a—
 - (i) serving member of her Majesty’s forces, or
 - (ii) civil servant, or
- (b) is living with a person mentioned in paragraph (a) of this regulation and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person,

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

(2) In this regulation, “civil servant” means a person employed in the civil service of the state.

Persons habitually resident in the United Kingdom

19.The residence and presence conditions set out in regulation 14 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 to the individual, and
- (c) the individual can demonstrate a genuine and sufficient link to Scotland.

Persons habitually resident outside the United Kingdom

20.—(1) The residence and presence conditions set out in regulation 14 do not apply in relation to the daily living component where an individual—

- (a) satisfies the conditions in paragraph (2) on the day the application is made, if the individual has rights arising from a relevant EU regulation, or
- (b) satisfies the conditions in paragraph (3) on the day the application is made, if the individual has rights arising from the UK-Ireland convention mentioned in that paragraph.

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

- (a) be an individual—

- (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens’ rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽⁹⁾), or
 - (cc) Title III of the EEA EFTA separation agreement (as defined in that section), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974⁽¹⁰⁾, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
- (b) be resident in—
- (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar,
- (c) have a genuine and sufficient link to Scotland, and
- (d) meet the other conditions prescribed in these Regulations.
- (3) The conditions referred to in paragraph (1)(b) are that the applicant must—
- (a) be an individual—
- (i) to whom the convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019⁽¹¹⁾ as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits,
- (b) be resident in Ireland,
- (c) have a genuine and sufficient link to Scotland, and
- (d) meet the other conditions prescribed in these Regulations.
- (4) The reference in paragraph (2)(c) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in that paragraph.
- (5) The reference in paragraph (3)(c) to an individual’s link to Scotland being sufficient is to its being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (3) would be incompatible with the convention mentioned in that paragraph.
- (6) In this regulation—
- “EEA State” means—
- (a) any member state of the European Union or
 - (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992⁽¹²⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽¹³⁾, as modified or supplemented from time to time,
- “EU law” has the meaning given by subsection (9) of section 126 of the Scotland Act 1998⁽¹⁴⁾ or, if that subsection has been repealed, the meaning given by that subsection immediately before its repeal⁽¹⁵⁾,
- “relevant EU Regulation” means one of the following Regulations—

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- (a) Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹⁶⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
- (b) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004⁽¹⁷⁾ on the coordination of social security systems.

Refugees

21.—(1) Regulation 14(d) does not apply in relation to a determination for Adult Disability Payment where an individual has—

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

(2) For the purposes of this regulation, “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971⁽¹⁸⁾.

PART 6

Entitlement under special rules relating to age

Age Criteria

22.—(1) An individual is eligible to receive Adult Disability Payment if they are at least 16 years of age.

(2) An individual is not entitled to either the daily living component or the mobility component of Adult Disability Payment for any period after the person reaches the relevant age.

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

(4) 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.

(5) Paragraph (2) is subject to the exceptions provided in regulation 23.

Persons of pensionable age: exceptions

23. Regulation 22(2) does not apply where the individual has reached the relevant age if they—

- (a) were entitled to an award of either or both components of either Adult Disability Payment or Personal Independence Payment on the day preceding the day on which they reached the relevant age; or
- (b) made a application for Adult Disability Payment or Personal Independence Payment before reaching the relevant age and that application was not determined before they reached that age, but an award of either or both components would be made in respect of the individual but for regulation 22(2).

Adult disability payment after an interval and after reaching the relevant age

24.—(1) Where an individual has reached the relevant age and makes a new application in the circumstances set out in regulation 13 the following exceptions apply.

(2) The exceptions referred to in paragraph (1) are—

- (a) regulation 22(2) does not apply;

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- (b) the reference to ‘2 years’ in regulation 13(1)(b) is to be read as ‘1 year’;
- (c) where the individual is assessed as having severely limited ability to carry out mobility activities for the purposes of the new application—
 - (i) the individual is entitled to the enhanced rate of the mobility component only if they were entitled to that rate of that component under the previous award; and
 - (ii) where the individual is not entitled to the enhanced rate of that component because of paragraph (2)(c)(i), they are entitled to the standard rate of that component provided that they were entitled to that rate of that component under the previous award; and
- (d) where the individual is assessed as having limited ability to carry out mobility activities for the purposes of the new application, they are entitled to the standard rate of the mobility component only if they were entitled to that component, at either rate, under the previous award.

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

- 25.**—(1) Subject to paragraph (2), regulation 22(2) does not apply where—
- (a) the individual has ongoing entitlement to an award (“the original award”) of either or both components of Adult Disability Payment or Personal Independence Payment pursuant to an exception in regulation 23 or 24; and
 - (b) the Scottish Ministers are making a subsequent determination of their entitlement by way of a determination without an application.
- (2) Where the original award includes an award of the mobility component and the determination without application is being made where—
- (a) it appears to the Scottish Ministers that the individual’s circumstances have changed, or
 - (b) the Scottish Ministers have new information available to them about the individual’s physical or mental health condition or conditions ,
- the restrictions in paragraph (3) apply in relation to the determination.
- (3) The restrictions referred to in paragraph (2) are—
- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component; and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
 - (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but the individual had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the determination takes or would take effect.

PART 7

Entitlement under special rules relating to terminal illness

Terminal Illness

- 26.**—(1) This regulation applies to a person —
- (a) who is terminally ill; and
 - (b) whose entitlement to adult disability payment is to be determined.

(2) A person to whom this regulation applies is entitled to both the daily living component and the mobility component at the enhanced rate.

(3) Paragraph (2) applies—

- (a) regardless of the period of time for which the individual has had the terminal illness,
- (b) regardless of any period of time spent by the individual in a hospital or hospice while in receipt of the assistance, and
- (c) to an individual who—
 - (i) makes a new application under section 38 of the 2018 Act, or
 - (ii) notifies a change of circumstances under section 56 of the 2018 Act with the effect that this regulation applies to that individual.

(4) Regulations 4, 5 and 14(d) do not apply to a person to whom this regulation applies.

(5) Subject to paragraph (6) or (7), the entitlement referred to in paragraph (2) begins either on the day the application is made, the day of notification of the change in circumstances or on the date of the clinical judgement made in accordance with paragraphs (8) and (9) (“the judgement”), whichever is the earlier.

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

- (a) is dated not more than 26 weeks earlier than the date of receipt of the application or notification of the change of circumstances, an individual’s entitlement can only begin—
- (b) up to a maximum of 26 weeks prior to the date of receipt of the application, and
- (c) on or after the day these Regulations come into force.

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

- (a) is dated more than 26 weeks earlier than the date of receipt of the application or notification of the change in circumstances, and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (8) and (9),
an individual’s entitlement can only begin—
- (c) up to a maximum of 26 weeks prior to the date of receipt of the application or notification of the change in circumstances, and
- (d) on or after the day these Regulations come into force.

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

(9) Subject to paragraph (10), an appropriate healthcare professional exercising the judgement described in paragraph (8) must take account of the guidance prepared and made publically available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(10) Where regulation 20 applies to the individual, an appropriate healthcare professional mentioned in paragraph 11(b) need not take account of the guidance mentioned in paragraph (8) where it is not reasonable to do so.

(11) 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 20 applies to the individual, a person who—
 - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in the place in which the individual is resident,
 - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that place, and

(iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(12) If a person who is terminally ill in terms of regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽¹⁹⁾ is to be transferred from Child Disability Payment onto Adult Disability Payment, then—

- (a) regulation X will apply,
- (b) the judgement they have previously received under regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 will apply, and
- (c) no further judgement will be required in terms of paragraphs (8) and (9) of this regulation.

(13) In paragraph (2), “the enhanced rate” for the daily living component and mobility component are the rates prescribed in regulation 33.

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

PART 8

Payability when a person is residing in certain accommodation or is detained in custody

Care home residents

27.—(1) Subject to paragraph (3) and regulation 29, the value of the daily living component of adult disability payment that is to be given to the individual is to be £0 on and after the day on which—

- (a) they become resident of a care home, and
- (b) the circumstances of their residence are such that any of the costs of any qualifying services provided for the individual are borne out of public or local funds by virtue of any of the enactments specified in paragraph (2).

(2) For the purpose of paragraph (1)(b), the specified enactments are—

- (a) Part 3 of the National Assistance Act 1948⁽²⁰⁾ (Local Authority Services);
- (b) sections 59 and 59A of the Social Work (Scotland) Act 1968⁽²¹⁾ (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision and grants in respect of secure accommodation for children respectively);
- (c) the Mental Health Act 1983⁽²²⁾;
- (d) the Community Care and Health (Scotland) Act 2002⁽²³⁾;
- (e) the Mental Health (Care and Treatment) (Scotland) Act 2003⁽²⁴⁾;
- (f) Part 1 of the Care Act 2014⁽²⁵⁾ (care and support);
- (g) any other enactment relating to persons under a disability or to young persons or to education or training except—
 - (i) section 49 of the Education (Scotland) Act 1980⁽²⁶⁾ (power of education authorities to assist persons to take advantage of educational facilities) or section 73 of that Act (power of Scottish Ministers to make grants to education authorities and others);

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- (ii) section 65 of the Further and Higher Education (Scotland) Act 1992⁽²⁷⁾ (administration of funds by HEFCW);
- (iii) section 4 of the Further and Higher Education (Scotland) Act 2005⁽²⁸⁾ (general duty of Scottish Ministers to provide support for funding of higher education) or section 11 of that Act (administration of funds);

(3) Subject to paragraph (4), paragraph (1) does not apply in the case of an individual—

- (a) who has not reached the age of 18 and to whom—
 - (i) section 93(4)(a)(ii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to impaired health and development) applies because the individual's health is likely to be significantly impaired, or further impaired, without provision of services for them; or
 - (ii) section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to disability) applies; or
- (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom).

(4) Paragraph (3)(a) only applies during any period in which the local authority looking after the individual places them in a private dwelling with a family, or with a relative of the individual, or with some other suitable person.

(5) In this regulation, “care home” means an establishment that provides accommodation together with nursing or personal care.

(6) The following are “qualifying services” for the purposes of paragraph (1)(b)—

- (a) accommodation;
- (b) board;
- (c) personal care;
- (d) such other services as may be prescribed.

Hospital in-patients

28.—(1) Subject to paragraph (3) and regulation 29, the value of either component of adult disability payment that is to be given to an individual is to be £0 on or after the day on which—

- (a) they begin undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) the circumstances are such that any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of paragraph (2).

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

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

(3) This regulation does not apply if the individual was under the age of 18 on the day on which they entered the hospital or similar institution referred to in this regulation to begin their current period as an inpatient.

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Exceptions: care homes and hospitals

29.—(1) Subject to the following paragraphs, regulation 27(1) or 28(1) do not apply to an individual in respect of the first 28 days of any period during which the individual is someone to whom that regulation applies.

(2) Where, on the day on which the individual's entitlement to adult disability payment commences, they meet the conditions set out in regulation 27(1)(b) or regulation 28(1)(b), paragraph (1) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to satisfy that condition.

(3) Regulation 27 or 28 does not apply where the individual is residing in a hospice and is terminally ill, and the Scottish Ministers have been informed that they are terminally ill—

(a) on an application for adult disability payment, or

(b) in writing in connection with an award of, or an application for, or an application for a re-determination or a supersession of an award of, adult disability payment.

(4) In paragraph (3), “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

(a) a health service hospital in England (within the meaning of section 275 of the National Health Service Act 2006⁽²⁹⁾);

(b) a hospital in Wales vested in—

(i) an NHS trust;

(ii) a Local Health Board; or

(iii) the Welsh Ministers,

for the purpose of functions under the National Health Service (Wales) Act 2006⁽³⁰⁾;

(c) a national health service hospital in Scotland (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978⁽³¹⁾);

(d) a hospital maintained by the Defence Council; or

(e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.

(5) Regulation 27(1) does not apply to a case where, during any period the total cost of the qualifying services are met—

(a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person's own resources and partly with assistance from another person or charity; or

(b) on that person's behalf by another person or a charity.

(6) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006⁽³²⁾;

“Local Health Board” means a body established under section 11 of that Act⁽³³⁾; and

“charity” is to be construed as if these Regulations were an enactment to which section 7 of the Charities Act 2011⁽³⁴⁾ (application in relation to Scotland) applied.

Legal Detention

30.—(1) Where an individual is undergoing legal detention within the United Kingdom—

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- (a) where the individual is aged 18 or over, the value of either component that is to be given to the individual is to be £0,
 - (b) where the individual is aged 16 or 17, the value of the daily living component that is to be given to the individual is to be £0.
- (2) Subject to paragraph (3), paragraph (1) does not apply on respect of the first 28 days of any period during which the individual is a person to whom that paragraph would otherwise apply.
- (3) Where, on the day on which the individual's entitlement to adult disability payment commences, they are a person to whom paragraph (1) applies, paragraph (2) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to be a person to whom that paragraph applies.
- (4) Paragraph (1) does not apply to the individual in respect of any period after the conclusion of criminal proceedings as a result of which the individual is detained in a hospital or similar institution in the United Kingdom as a person suffering from mental disorder unless the individual satisfies either of the conditions set out in paragraph (5).
- (5) The conditions referred to in paragraph (4) are—
- (a) the individual is—
 - (i) detained under section 45A of the Mental Health Act 1983⁽³⁵⁾ (power of higher courts to direct hospital admission) or section 47 of that Act⁽³⁶⁾(removal to hospital of persons serving sentences of imprisonment, etc) and
 - (ii) being detained on or before the day which the Secretary of State has certified to be the individual's release date within the meaning of section 50(3) of that Act⁽³⁷⁾; or
 - (b) the individual is being detained under—
 - (i) section 59A of the Criminal Procedure (Scotland) Act 1995⁽³⁸⁾ (hospital direction); or
 - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽³⁹⁾ (transfer of prisoners for treatment of mental disorder).
- (6) For the purposes of this regulation—
- (a) "hospital or similar institution" means any place (not being a prison, a detention centre a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
 - (b) criminal proceedings against any person are deemed to be concluded upon that person being found in terms of section 53F of the Criminal Procedure (Scotland) Act 1995 to be unfit for trial.
- (7) Paragraph (1) of this regulation does not apply to an individual where—
- (a) the individual is undergoing legal detention outside United Kingdom; and
 - (b) in similar circumstances in United Kingdom, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

Periods of Residence

- 31.—**(1) In this regulation, a "period of residence" is a period during which an individual—
- (a) meets the condition in regulation 27(1) (care home residents);
 - (b) meets the condition in regulation 28(1) (hospital in-patients);
 - (c) is a person who is undergoing legal detention.
- (2) Subject to paragraph (3), for the purposes of regulations 27, 28 and 30, a period of residence—

⁽³⁵⁾
⁽³⁶⁾
⁽³⁷⁾
⁽³⁸⁾
⁽³⁹⁾

- (a) begins on the day after the day on which the individual enters a care home, hospital or similar institution or commences a period of imprisonment or legal detention; and
 - (b) ends on the day before the day on which the individual leaves a care home, hospital or similar institution or on which a period of imprisonment or legal detention ends.
- (3) Where an individual who is resident in a care home or hospital, or is undergoing legal detention takes a period of leave from the home, the days on which the individual begins and returns from leave are not to be counted as days in the home or hospital.
- (4) Where, immediately following a period of residence for the purpose of paragraph (a), (b) or (c) of paragraph (1), the individual commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which the individual leaves the care home, hospital or similar institution or, as the case may be, on which the period of detention ends.
- (5) Where an individual enters or returns to a care home, legal detention or hospital as a result of transfer from a hospital, hospice or another care home, the day of transfer is to be counted as day in the care home or hospital.
- (6) Subject to paragraph (7), for the purposes of regulation 29(1) and 30(2), the period of residence may comprise two or more separate periods, provided that there is no more than 28 days between each period.
- (7) Paragraph (6) is, where the periods referred to in sub-paragraph (a) of that paragraph are both or all periods to which regulation 30(2) applies, to have effect as if—
- (a) the words “subject to paragraph (7)” and “regulation 29(1)” were omitted; and
 - (b) the reference to “28 days” in that paragraph read “one year”.
- (8) Where an individual has been in receipt of £0 for either or both components of Adult Disability Payment, in terms of regulation 27(1), 28(1) or 30(1)—
- (a) the rate of payment will cease to be £0 where the period of residence ends, and
 - (b) the individual will receive a determination without an application in terms of regulation 40(1)(b)(xi).

Payment of Adult Disability Payment between two periods of residence

32.—(1) This regulation applies to an individual to whom regulation 31(3) applies, who takes leave from a care home, hospital or legal detention.

(2) Where the individual takes leave from a care home, the Scottish Ministers must make a determination without application in respect of the daily living component of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the care home within 28 days of the date of taking leave.

(3) Where the individual takes leave from a hospital or legal detention, the Scottish Ministers must make a determination without application in respect of the both components of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the hospital or legal detention within 28 days of the date of taking leave.

(4) Where the individual is taking leave on a date before the end of the period specified (if any) in the individual’s notice of determination under section 40 of the Social Security (Scotland) Act 2018, which was made before the individual entered the care home, hospital or legal detention, the determination in paragraph (2) or (3) must be at the same rate of the daily living component as at that earlier determination, before regulation 31(3) applied.

(5) The period of leave mentioned in paragraphs (2) or (3) 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, hospital or legal detention.

(6) Where an individual leaves a care home, hospital or legal detention 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 40(1)(b)(x).

PART 9

Short Term Assistance

[these provisions are to be added in a later draft]

PART 10

Making of Applications and Payments

Rate of Adult Disability Payment

33.—(1) The weekly rates of the daily living component for the purposes of regulation 4 are~~(40)~~—

- (a) the standard rate, £58.70; and
- (b) the enhanced rate, £87.65.

(2) The weekly rates of the mobility component for the purposes of regulation 5 are—

- (a) the standard rate, £23.30
- (b) the enhanced rate, £62.25.

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

- (a) the daily living component of Adult Disability Payment, and
- (b) payment of Constant Attendance Allowance within the meaning of section 61 of the Social Security Act 1975~~(41)~~,

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

(4) For the purposes of calculating the reduction in paragraph (3), where the amount of Constant Attendance Allowance is equal to or greater than the amount of Adult Disability Payment, the value of the Adult Disability Payment that is to be given to the individual is to be £0.

(5) Adult Disability Payment is only to be given in the form of money, except as provided for by regulation 46.

Making Payments

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

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

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

(41)

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

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

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

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

- (a) would not satisfy the requirement in regulation 4 (daily living component), 5 (mobility component), 10 (required period condition: daily living component) or 11 (required period condition: mobility component), if the application were treated as made on the day it was received, and
- (b) would be likely to satisfy those requirements if the application were treated as made at a later date, the Scottish Ministers may treat the application as having been made on the day on 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 Adult Disability Payment, the date of entitlement is to be identified in accordance with paragraphs (4) to (6).

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

- (a) the day on which the required 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 8 week period described in paragraph (4), they may treat it as having been made in accordance with paragraph (2).

(6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made outwith the 8 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 Adult 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(3) of the 2018 Act, the period covered by an application for Adult Disability Payment—

- (a) under paragraph (1)(a)—
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made,
- (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

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

- (a) 4 weekly in arrears, or
- (b) where regulation 26 applies, weekly in advance.

Continuing Eligibility

37. An individual’s entitlement to Adult Disability Payment may be made on the basis that the individual has ongoing entitlement to that assistance.

PART 11

Qualifications and Experience Necessary to Carry out Assessments

Qualifications and experience necessary to carry out Assessments

38.—(1) Where an assessment is required in order to determine whether an individual is entitled to receive Adult Disability Payment, this must be carried out by a practitioner who meets the requirements in paragraph (2).

(2) A practitioner is suitably qualified to carry out an assessment of an individual if—

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

PART 12

Determinations of entitlement to Adult Disability Payment without application

Consideration of entitlement after specified period

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

Other situations requiring a determination without an application

40.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application where—

- (a) the required data in order to construct a record for the individual has been received in terms of regulation 35(4), but no subsequent application has been made;
- (b) during the period specified in the individual's notice of determination under section 40 of the Social Security (Scotland) Act 2018, the Scottish Ministers become aware—
 - (i) of a change of circumstances which would possibly result in an alteration to the rate of Adult Disability Payment payable or the cessation of entitlement to Adult 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 41(1) and 42(1),
- (iv) of an alteration of the rate of award of Personal Independence Payment of which the individual was in receipt immediately before transferring to Adult Disability Payment in accordance with regulation X 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) that the person has been admitted to a care home or hospital, or legally detained, for more than 28 days ;
- (vi) that the individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error);
- (vii) that, as a result of the individual receiving payment of Personal Independence Payment at an incorrect rate in another part of the United Kingdom, before transferring to Scotland in accordance with regulation X, the individual is liable for overpayment of Personal Independence Payment.
- (viii) that a clinical judgement has been made in terms of regulation 26(8) and (9) that they have a terminal illness;
- (ix) that as a result of the eligibility criteria for Adult Disability Payment being altered, the individual's entitlement may have changed;
- (x) the individual has notified the Scottish Ministers that they have left a care home, hospital or legal detention, meaning that they are no longer to be taken to be on leave within the meaning of regulation 32;
- (xi) that the individual is no longer resident in a care home or in hospital or legal detention, and therefore a new determination is required in terms of regulation 31(8),
- (c) they are informed that an individual in respect of whom Adult Disability Payment is payable, has transferred—
 - (i) to Scotland from another part of the United Kingdom in terms of regulation X, or
 - (ii) from Scotland to another part of the United Kingdom in terms of regulation X;

(2) Paragraphs (1)(b) and (1)(c) apply only where the Scottish Ministers have previously made a determination of the individual's entitlement to Adult Disability Payment.

Determination following official error – underpayments

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

- (a) they have previously make a determination of the individual's entitlement to Adult Disability Payment or short-term assistance ("the original determination"), and
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
 - (i) not being given an award of Adult Disability Payment or short-term assistance to which they were entitled, or
 - (ii) being given a lower award than that to which they were entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the original determination, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the original determination.

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

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

(3) 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 error – overpayments

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

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

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

- (a) the information provided in the application that led to the original determination,
- (b) any other information they have obtained in connection with that application, and
- (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Adult Disability Payment or short-term assistance.

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

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

When changes in entitlement take effect

43.—(1) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is increased, the changed entitlement—

- (a) in the case of a determination under regulation 40(1)(b)(iv), there is an increase in the rate of Personal Independence Payment which an individual was in receipt at the time of transferring to Adult Disability Payment in accordance with regulation X, begins on the date of the first determination of entitlement to Adult Disability Payment,
- (b) in the case of a determination without an application under any other provision within regulation 40(1), begins —
 - (i) where determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers within 4 weeks of the change occurring, on the date on which the individual first satisfied the requirements for a higher rate of the care or mobility component,
 - (ii) where the determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers after 4 weeks but before 56 weeks of the change occurring, the date on which the individual notified the change, or
 - (iii) in any other case, on the date on which the determination was made by the Scottish Ministers.
- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 41 or 42 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, 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)(a), (b) or (c).

(3) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is decreased, or entitlement ceases, the change in entitlement begins—

- (a) where the individual has notified the Scottish Ministers of the change of circumstances, on the date of the determination, or
- (b) in all other cases, on the date of the change in circumstances or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances.

(4) 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 (3).

PART 13

Periods in respect of a re-determination request

Periods in respect of a re-determination request

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

(2) The period prescribed for making a re-determination of an individual's entitlement to Adult 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 14

Provision of vehicles

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

45.—(1) Where—

- (a) the enhanced rate of the mobility component of Adult 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.

PART 15

Transfer from Child Disability Payment to Adult Disability Payment

[details to be added in a later draft]

PART 16

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

[details to be added in a later draft]

PART 17

Liability for overpayment

Liability for assistance given in error

46.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act, or under regulation 42, the individual's payment of Adult 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 (1), "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 assistance was given in a form other than money, its value for the purposes of this regulation 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 these Regulations, including a determination made correctly but on the basis of—
 - (i) incorrect information, or
 - (ii) 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

47.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Adult 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 46—

- (a) allows Adult Disability Payment or short-term assistance to be given to the individual by way of deduction, or
- (b) previously allowed Adult 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 Adult Disability Payment or short-term assistance to be given by way of deduction (including introducing a deduction, where the full amount of Adult Disability Payment or short-term assistance was previously given as money),

- (b) vary any period for which the individual's Adult 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 Adult 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 Adult 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 Adult Disability Payment or short-term assistance being given by way of deduction,
- (b) wishes for the Scottish Ministers to increase the amount of their Adult Disability Payment or short-term assistance that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Adult Disability Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in 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 18

Pilot Scheme

[details to be added in a later draft]

PART 19

Consequential Amendments

[details to be added in a later draft]

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh

Date

SCHEDULE 1

Regulation 1

ADULT DISABILITY ASSISTANCE DETERMINATION

PART 1

INTERPRETATION

48. In this schedule—

“aided” means with—

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

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

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

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

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

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

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

“complex budgeting decisions” means decisions involving—

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

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

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

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

“dress and undress” includes put on and take off socks and shoes;

“engage socially” means—

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

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

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

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

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

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

- (a) doctor;
- (b) nurse;
- (c) pharmacist; or
- (d) health professional who is registered by the Health Professions Council,

“monitor a health condition” means—

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

(b) take action advised by a—

(i) registered doctor;

(ii) registered nurse; or

(iii) health professional who is registered by the Health Professions Council,

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

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

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

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

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

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

“simple budgeting decisions” means decisions involving—

(a) calculating the cost of goods; and

(b) calculating change required after a purchase;

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

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

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

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

“take nutrition” means—

(a) cut food into pieces, convey food and drink to their mouth and chew and swallow food and drink;
or

(b) take nutrition by using a therapeutic source;

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

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

(a) registered—

(i) doctor;

(ii) nurse; or

(iii) pharmacist; or

(b) health professional regulated by Health Professions Council;

but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means), or any action which, in the individual’s case, falls within the definition of “monitor a health condition”;

“toilet needs” means—

(a) getting on and off an unadapted toilet;

(b) evacuating the bladder and bowel; and

(c) cleaning oneself afterwards; and

“unaided” means without—

(a) the use or aid of an appliance; or

(b) supervision, prompting or assistance.

PART 2

DAILY LIVING ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Preparing food.	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition.	a. Can take nutrition unaided.	0
	b. Needs— (i) to use an aid or appliance to be able to take nutrition; or (ii) supervision to be able to take nutrition; or (iii) assistance to be able to cut up food.	2
	c. Needs a therapeutic source to be able to take nutrition.	2
	d. Needs prompting to be able to take nutrition.	4
	e. Needs assistance to be able to manage a therapeutic source to take nutrition	6
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either— (i) does not receive medication or therapy or need to monitor a health condition; or (ii) can manage medication or therapy or monitor a health condition unaided.	0
	b. Needs any one or more of the following— (i) to use an aid or appliance to be able to manage medication;	1

	(ii) supervision, prompting or assistance to be able to manage medication;	
	(iii) supervision, prompting or assistance to be able to monitor a health condition.	
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing.	a. Can wash and bathe unaided.	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of an unadapted bath or shower.	3
	f. Needs assistance to be able to wash their body between the shoulders and waist.	4
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence	a. Can manage toilet needs or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2
	d. Needs assistance to be able to manage toilet needs.	4

	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8
6. Dressing and undressing.	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either—	2
	(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or	
	(ii) prompting or assistance to be able to select appropriate clothing.	
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally.	a. Can express and understand basic and complex verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2

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

PART 4

MOBILITY ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs the presence or prompting of another person to be able to undertake any journey to avoid overwhelming psychological distress to the individual.	4

	c. For reasons other than psychological distress, cannot plan the route of a journey.	8
	d. For reasons other than psychological distress, cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journeys at all because it would cause overwhelming psychological distress to the individual .	10
	f. For reasons other than psychological distress, cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres either aided or unaided.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres, either aided or unaided.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided, — (i) stand; or (ii) move more than 1 metre.	12

SCHEDULE 2

Regulation 17

MEMBERS OF HER MAJESTY'S FORCES: EXCLUDED PERSONS

49. The following persons are not members of Her Majesty's forces for the purpose of these Regulations—

- (a) subject to paragraph 2, any person who is serving as a member of any naval force of Her Majesty's forces and who locally entered that force at a naval base outside the United Kingdom;
- (b) 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 of the United Kingdom;
- (c) 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 engagement to serve only in a specified part of the world outside the United Kingdom.

50. Paragraph 1(a) does not include any person who —

- (a) has previously been an insured person under Part 1 of the National Insurance Act 1965~~(42)~~; or
- (b) is paying or has previously paid one or more of the following classes of contribution under the Social Security Act 1975~~(43)~~ or the Social Security Contributions and Benefits Act 1992~~(44)~~ —
 - (i) primary Class 1;
 - (ii) Class 2; or
 - (iii) Class 3.

~~(42)~~1965, c.38. Part 1 of this Act was repealed with savings by the Social Security Act 1973 (c. 38), section 100(1) and (2)(b) and Schedules 26 and 28 and by the Social Security (Consequential Provisions) Act 1992 (c. 6), Schedules 1 and 3.

~~(43)~~1975, c.14. Section 1(2) lists the Classes of contributions. This Act was repealed by the Social Security (Consequential Provisions) Act 1992, Schedule 1.

~~(44)~~ 1992, c.4. Section 1(2) lists the Classes of contributions.