

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Social Services,
Kathryn Campbell

Social Security Act 1991

Adult Disability Assessment Determination 2018

Purpose

The purpose of this Determination is to enable the Secretary to assess the disability, emotional state, behaviour and special care needs of an adult care receiver (a person aged 16 or more). This Determination will also provide a method for rating the person by giving them, on the basis of the results of the test, a score that indicates the level of physical, intellectual or psychiatric disability of the person. This assessment is one of the qualification criteria for carer payment under sections 197D and 198 of the *Social Security Act 1991* (the Act) and carer allowance under sections 954 and 954A of the Act.

The Determination includes a test for assessing and a method for rating a person's disability, emotional state, behaviour and special care needs. The test and rating method are collectively known as the Adult Disability Assessment Tool (ADAT). The ADAT will also be used to assess care receivers as part of ongoing reviews of qualification.

This Determination replaces the previous *Adult Disability Assessment Determination 1999* which sunsets on 1 October 2018.

Background

Section 198 of the Act sets out the qualification requirements for carer payment. This section provides that in order for a person to meet the requirement of constant care for a disabled adult, the disabled adult must have been assessed and rated under the ADAT, resulting in a minimum score, depending on the circumstances of the care. Section 198 of the Act prescribes minimum scores that must be attained depending on whether the person is the only person providing constant care to the disabled adult or if the person is providing care to the disabled adult and a dependent child.

Section 197D of the Act also prescribes minimum scores that must be attained to qualify for carer payment. This section applies in circumstances where a person provides constant care for a disabled adult and one or more children, each with a disability or medical condition. The minimum scores set out in paragraph 197D(1)(a) of the Act only apply to the disabled adult who must be assessed and rated under the ADAT.

Section 954 of the Act sets out the qualification requirements for carer allowance where a person is caring for a disabled adult in a private home of both the adult and the carer. Paragraph 954(1)(c) of the Act provides that, for a person to qualify for carer allowance, the disabled adult must be assessed and rated under the ADAT, resulting in a score of at least 30. This score must be made up of at least 12 points from the professional questionnaire. This requirement is mirrored in paragraph 954A(1)(c), in relation to qualification for carer allowance where a person is caring for a disabled adult in a private home not shared by the adult and carer.

The *Assistance for Carers Legislation Amendment Act 1999* (the Assistance for Carers Act) received Royal Assent on 9 April 1999. Schedule 1 to the Assistance for Carers Act inserted section 38C of the Act, with effect from 1 July 1999.

The Adult Disability Assessment Determination 2018 (the **Determination**) is made under section 38C of the Act, which provides for the creation of a determination by the Secretary to the Department of Social Services in relation to an adult's disability. Section 38C of the Act provides that the Determination is a disallowable instrument.

The Determination has two parts with two schedules. Part 1 sets out the preliminary details of the Determination, including the definitions and the legislative background. Part 2 explains that there are two questionnaires, which make up the ADAT, one to be completed by the claimant for carer payment and/or carer allowance and one to be completed by the care recipient's treating health professional. These questionnaires are detailed in Schedule 1. Part 2 also sets out the steps that must be followed for the test to be completed and briefly explains the rating method that will provide a score for the care receiver. This rating method has five steps and is set out in Schedule 2.

The Determination has been remade in substantially the same terms as the Adult Disability Assessment Determination 1999 (the **1999 Determination**). The delegation section, previously provided at section 1.4 of 1999 Determination, has been removed in the new Determination. Part 3 of the 1999 Determination has also been removed as it contained an incorrect reference to Chapter 6 of the Act, which was repealed upon the commencement of the *Social Security (Administration) Act 1999* (the **Administration Act**), which now includes all review provisions. This is to reflect contemporary drafting practice and to be consistent with similar legislative instruments made under the social security law. These changes have no practical impact on the operation of the Determination.

The delegation and review sections were originally inserted into the 1999 Determination because it was drafted and registered prior to the commencement of the Administration Act.

Prior to the commencement of the Administration Act, the Act provided powers of delegation and review of decisions under the Act, but did not clearly provide for a delegation under the Act, or review of a decision made under the Act, to apply to the exercise of powers informed by an instrument.

The 1999 Determination was made prior to the commencement of the Administration Act. Instruments made after the commencement of the Administration Act are made

under the social security law and no longer routinely include specific delegation or review powers.

Commencement

The Determination commences on 1 October 2018.

Consultation

The Office of Best Practice Regulation (OBPR) and the Department of Human Services were consulted during the preparation of this Determination.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has been consulted on the remaking of this Determination without significant changes, and advised a Regulation Impact Statement or Certification Letter are not required (OBPR ID: 23766).

Explanation of the provisions

Part 1

Section 1.1

This section provides how the Determination is to be cited, that is, as the *Adult Disability Assessment Determination 2018*.

Section 1.2

This section provides that the Determination commences on 1 October 2018.

Section 1.3

This section cites the authority under which the Determination is made; namely, section 38C of the Act.

Section 1.4

This section defines terms that are used in this Determination.

Section 1.5

This section provides that the Secretary may approve a person or a class of persons as treating health professionals.

Section 1.6

This section provides that Part 2 of the Determination sets out the ADAT.

Part 2

Section 2.1

This section provides that Part 1 of Schedule 1 sets out the claimant questionnaire, to be completed only by the claimant for carer allowance or carer payment, or both. This section clarifies that the claimant questionnaire may be used by a claimant to claim payment or to continue to be qualified for payment. The claimant would use the claimant questionnaire to continue to be qualified for payment where the claimant's ongoing eligibility for carer allowance or carer payment is being reviewed. This section also provides that Part 2 of Schedule 1 sets out the professional questionnaire, to be completed only by a treating health professional.

Section 2.2

This section sets out the steps to be carried out as part of the test for assessing a person's disability, emotional state, behaviour and special care needs.

Section 2.3

This section provides that steps 1 to 5 in Schedule 2 set out the method for rating a person, based on the answers provided in the questionnaires. This rating method comprises the scale referred to in subsection 38C(2) of the Act. The score that results from the use of this rating method is used to determine whether the person is a care receiver to which subparagraph 197D(1)(a)(i), paragraph 198(2)(a), subparagraph 198(2)(d)(i), paragraph 954(1)(c) or paragraph 954A(1)(c) of the Act applies.

Schedule 1

Part 1 of Schedule 1 sets out the claimant questionnaire to be complete by the person claiming carer allowance or carer payment, or both. Part 2 of Schedule 1 sets out the professional questionnaire to be completed by a treating health professional. Both questionnaires are made up of three sets of questions, addressing different care needs.

Schedule 2

Schedule 2 sets out the rating method that should be used to determine the scores for the claimant questionnaire and professional questionnaire. This score is used to determine whether a person meets the qualification criteria for carer payment under sections 197D and 198 of the Act and carer allowance under sections 954 and 954A of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Adult Disability Assessment Determination 2018

The Adult Disability Assessment Determination 2018 (the Determination) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of this Determination is to enable the Secretary to assess the disability, emotional state, behaviour and special care needs of an adult care receiver (a person aged 16 or more). This Determination will also provide a method for rating the person by giving them, on the basis of the results of the test, a score that indicates the level of physical, intellectual or psychiatric disability of the person. This assessment is one of the qualification criteria for carer payment under sections 197D and 198 of the *Social Security Act 1991* (the Act) and carer allowance under sections 954 and 954A of the Act.

The Determination includes a test for assessing and a method for rating a person's disability, emotional state, behaviour and special care needs. The test and rating method are collectively known as the Adult Disability Assessment Tool (ADAT). The ADAT will also be used to assess care receivers as part of ongoing reviews of qualification.

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Human rights implications

Right to Social Security

These Guidelines engage the human right to social security contained in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

This Determination enables eligible carers to claim Carer Payment and/or Carer Allowance subject to residency, income and assets, which are considered separately in the assessment process. This Determination is therefore compatible with human rights.

Conclusion

This Determination is compatible with human rights as it enables a person to access social security in the form of Carer Payment and/or Carer Allowance.

Kathryn Campbell

Secretary of the Department of Social Services