
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

The Disability Assistance for Working
Age People (Scotland) Regulations 2022

PART 7

Entitlement under special rules for terminal illness

Entitlement under special rules for terminal illness

26.—(1) An individual who has a terminal illness is to be treated as satisfying the conditions for the enhanced rate of both the daily living component and the mobility component of Adult Disability Payment.

(2) Paragraph (1) applies regardless of the period of time for which the individual has had the terminal illness.

(3) Regulations 5 and 6 do not apply to a person to whom this regulation applies.

(4) Subject to paragraphs (5) and (6), the individual's entitlement to the rates referred to in paragraph (1) begins on the date on which—

- (a) the individual's application for Adult Disability Payment was made, where the application included information about the individual's terminal illness,
- (b) the Scottish Ministers became aware of the individual's terminal illness (whether as a result of the individual notifying a change in circumstances or otherwise), where the individual was previously awarded, and has an ongoing entitlement to, Adult Disability Payment, on the basis of a determination that the individual was entitled to the daily living component or the mobility component or both in relation to a condition other than terminal illness, or
- (c) the clinical judgement was made in accordance with paragraphs (7) and (8) ("the judgement"),

whichever is the earlier.

(5) Where the judgement mentioned in paragraph (4)(c) is dated not more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies ("the applicable date"), the Scottish Ministers have the power, when making their determination, to specify that an individual's entitlement begins—

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

(6) Where the judgement mentioned in paragraph (4)(c)—

- (a) is dated more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies ("the applicable date"), and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (7) and (8),

an individual's entitlement can only begin—

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

(7) For the purposes of these Regulations an individual 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 the individual's death.

(8) Subject to paragraph (9), an appropriate healthcare professional exercising the judgement described in paragraph (7) must have regard to 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(1).

(9) Where regulation 20 (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies to the individual, an appropriate healthcare professional mentioned in paragraph 10(b) need not have regard to the guidance mentioned in paragraph (8) where it would not be reasonable in the circumstances to insist on the judgement being formed with regard to that guidance.

(10) 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 individual, 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 an EEA state, Gibraltar or Switzerland,
 - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that EEA state, Gibraltar or Switzerland, and
 - (iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(11) Where an individual has previously received Adult Disability Payment or a benefit listed in paragraph 12(a) 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 by virtue of this regulation, that individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the subsequent determination and the value of Adult Disability Payment or the benefit listed in paragraph 12(a) to which that individual was previously entitled for that period.

(12) For the purpose of paragraph 11—

- (a) the benefits are—
 - (i) armed forces independence payment,
 - (ii) Attendance Allowance,
 - (iii) Child Disability Payment,
 - (iv) Disability Living Allowance, or
 - (v) Personal Independence Payment, and
- (b) regulation 4 (entitlement to other benefits) is treated as omitted.