
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 9

Making of applications and payments and duration of eligibility

When an increase in level of entitlement takes effect

45.—(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 or their entitlement to a component is awarded, the change takes effect—

- (a) in the case of an increase pursuant to a determination made under regulation 48(c) or 48(d) (determination following change of circumstances etc.) on the day after the day on which Personal Independence Payment ceased to be paid in respect of the individual,
- (b) in the case of an award of entitlement to a component or an increase pursuant to a determination made in accordance with regulation 48(a) that affects their eligibility under regulation 5 (daily living component) or regulation 6 (mobility component), on the date when—
 - (i) if as a result of the individual reporting the change—
 - (aa) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for a higher rate of the daily living or mobility component,
 - (bb) if the individual reports the change within more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, or
 - (cc) in any other case, the individual reports the change.
 - (ii) if as a result of the Scottish Ministers becoming aware that a determination of an individual's entitlement was made in ignorance of a material fact, on the date when the Scottish Ministers make the determination.
- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 49 (determination following official error – underpayments) or on error within the meaning of regulation 50 (determination following error – overpayments), begins on the date when the earlier determination took effect, or
- (d) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph (1) (b), (c) or (d).

(3) This regulation does not apply to an individual to whom regulation 26 (entitlement under special rules for terminal illness) applies.

(4) Where an individual has previously received Adult Disability Payment for a period and a determination without application has subsequently been made that the same individual is entitled to Adult Disability Payment at a higher rate for that period, 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 to which that individual was previously entitled for that period.