

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

**The Disability Assistance for Older
People (Scotland) Regulations 2024**

PART 3

Eligibility

Eligibility criteria: daytime and night-time condition and required period

- 5.—(1) An individual may be awarded Pension Age Disability Payment if they satisfy—
- (a) the condition specified in paragraph (2) below (“the daytime condition”),
 - (b) the condition specified in paragraph (3) below (“the night-time condition”), or
 - (c) both the daytime condition and the night-time condition.
- (2) An individual meets the daytime condition if they are so severely disabled physically or mentally that, by day, they require from another person either—
- (a) frequent attention throughout the day in connection with their bodily functions, or
 - (b) continual supervision throughout the day in order to avoid substantial danger to themselves or others.
- (3) An individual meets the night-time condition if they are so severely disabled physically or mentally that, at night,—
- (a) they require from another person prolonged or repeated attention in connection with their bodily functions, or
 - (b) in order to avoid substantial danger to themselves or others they require another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over them.
- (4) For the purposes of paragraphs (2) and (3), the individual shall not be taken to satisfy paragraph (2)(a) or paragraph (3)(a) unless the attention the severely disabled person requires from another person is required to be given in the physical presence of the severely disabled person.
- (5) In this regulation—
- “attention” means the provision of personal care, prompting or motivation in relation to bodily functions or assistance with communication needs,
 - “require” means reasonably require and cognate expressions are to be construed accordingly, and
 - “supervision” means the continual presence of another person for the purpose of reducing the real risk of harm to the individual and to others.
- (6) An individual is not entitled to Pension Age Disability Payment at the lower rate or higher rate unless throughout the period of 26 weeks immediately preceding the date on which the award would begin (“the required period”), the individual has satisfied or is likely to satisfy—
- (a) the daytime condition,

- (b) the night-time condition, or
- (c) both.

(7) Paragraph (6) does not apply where regulation 18 (entitlement under special rules for terminal illness) applies.

(8) In this regulation and in regulation 7—

“bodily functions” means the normal actions of any organ of the body, including the brain, or of a number of organs acting together, and

“day” is to be construed in relation to the ordinary domestic routine of the household in which the individual lives.

Eligibility criteria: rates of Pension Age Disability Payment

6.—(1) An individual may be awarded Pension Age Disability Payment at either the lower rate or the higher rate.

(2) An individual is entitled to Pension Age Disability Payment at the lower rate if they meet either the daytime condition or the night-time condition.

(3) An individual is entitled to Pension Age Disability Payment at the higher rate if they meet both the daytime condition and the night-time condition.

Entitlement to Pension Age Disability Payment when undergoing renal dialysis

7.—(1) Except as provided in paragraph (3), an individual suffering from renal failure who is undergoing the treatment specified in paragraph (2) is treated as meeting the condition—

- (a) in paragraph (2) of regulation 5 where they undergo renal dialysis by day,
- (b) in paragraph (3) of regulation 5 where they undergo renal dialysis by night, or
- (c) in either paragraph (2) or paragraph (3) of regulation 5, but not both, if they undergo renal dialysis by day and by night.

(2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—

- (a) two or more times a week, and
- (b) which either—
 - (i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or
 - (ii) which, because of the particular circumstances of their case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the individual undergoing renal dialysis or to supervise that individual in order that they avoid substantial danger to themselves.

(3) Paragraph (1) does not apply to an individual undergoing the treatment specified in paragraph (2) where the treatment—

- (a) is provided under the National Health Service (Scotland) Act 1978⁽¹⁾, the National Health Service Act 2006⁽²⁾, the National Health Service (Wales) Act 2006⁽³⁾ or the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁴⁾,
- (b) is in a hospital or similar institution,
- (c) is out-patient treatment, and

(1) 1978 c. 29.

(2) 2006 c. 41.

(3) 2006 c. 42.

(4) S.I. 1972/1265.

- (d) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.
- (4) In this regulation a “hospital or similar institution” means—
- (a) a health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978⁽⁵⁾) in Scotland,
 - (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006⁽⁶⁾) in England,
 - (c) a hospital in Wales vested in—
 - (i) an NHS trust,
 - (ii) a Local Health Board, or
 - (iii) the Welsh Ministers,
 - (d) a hospital (within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁷⁾ or the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁸⁾) in Northern Ireland.
- (5) For the purposes of determining whether an individual is to be treated as meeting one of the conditions specified in paragraph (1), any period of time where paragraph (3) applies to the individual can be included for the purposes of calculating the period of 26 weeks required by regulation 5(6).

(5) [1978 c. 29](#). Section 108(1) was relevantly amended by paragraph 6(a) of schedule 6 of the Health Services Act 1980 ([c. 53](#)) and section 66(1) and paragraph 19(22)(b) of schedule 9 of the National Health Service and Community Care Act 1990 ([c. 19](#)).

(6) [2006 c. 41](#). Section 275 was relevantly amended by paragraph 138(2)(b) of schedule 4(12) of the Health and Social Care Act 2012 ([c. 7](#)).

(7) Article 2 of the Health and Personal Social Services (Northern Ireland) Order 1972 ([S.I. 1972/1265 \(N.I. 14\)](#)) contains a definition of “hospital”.

(8) [S.I. 1991/194](#).