

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.