

2024 No. 141

SOCIAL SECURITY

**The Disability Assistance for Older People (Consequential
Amendment and Transitional Provision) (Scotland) Regulations
2024**

<i>Made</i>	- - - -	<i>9th May 2024</i>
<i>Laid before the Scottish Parliament</i>		<i>13th May 2024</i>
<i>Coming into force</i>	- -	<i>21st October 2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Disability Assistance for Older People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2024 and come into force on 21 October 2024.

Amendment of the Social Security (Invalid Care Allowance) Regulations 1976

2. In regulation 9(2)(b) (conditions relating to residence and presence in Great Britain) of the Social Security (Invalid Care Allowance) Regulations 1976(b)—

- (a) at the end of head (v), omit “or”,
- (b) at the end of head (vi), insert—

“or,

- (vii) pension age disability payment in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(c)”.

Amendment of the Council Tax (Discounts) (Scotland) Regulations 1992

3. In regulation 2(3)(c) (care workers) of the Council Tax (Discounts) (Scotland) Regulations 1992(d)—

- (a) at the end of head (iiid) omit “or”,
- (b) after head (iiid) insert—

(a) 2018 asp 9.

(b) S.I. 1976/409, relevantly amended by S.I. 1996/2744, S.I. 2000/636, S.I. 2002/2497, S.I. 2013/388, S.I. 2013/389, S.I. 2013/591, S.I. 2017/1015 and S.S.I. 2023/346.

(c) S.S.I. 2024/XXX.

(d) S.I. 1992/1409, relevantly amended by S.S.I. 2022/31.

“(iiiie) the higher rate of Pension Age Disability Payment in accordance with regulation 6 (eligibility criteria: rates of Pension Age Disability Payment) of the Disability Assistance for Older People (Scotland) Regulations 2024(a), or short-term assistance in accordance with Part 1 of the schedule (short-term assistance) of those Regulations where the “earlier determination” referred to in paragraph 1(1)(a) of that schedule awarded the higher rate of Pension Age Disability Payment, or”.

Amendment of the National Assistance (Assessment of Resources) Regulations 1992

4.—(1) The National Assistance (Assessment of Resources) Regulations 1992(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2 (interpretation)—

(a) after the definition of “partner” insert—

““pension age disability payment” means disability assistance for older people given in accordance with the Pension Age Disability Payment Regulations,

“Pension Age Disability Payment Regulations” means the Disability Assistance for Older People (Scotland) Regulations 2024(c),”

(b) in the definition of “short-term assistance” after “Adult Disability Payment Regulations”, insert “or Part 1 of the schedule of the Pension Age Disability Payment Regulations”.

(3) In paragraph 3 of schedule 2 (sums to be disregarded in the calculation of earnings)—

(a) in sub-paragraph (2)(b)(i) after “severe disablement allowance” insert “, pension age disability payment”,

(b) after sub-paragraph (2)(b)(vii) insert—

“(viii) would be in receipt of pension age disability payment had the amount to which the individual is entitled not been reduced to £0 in accordance with regulation 19 (effect of admission to a care home) or regulation 24 (entitlement beginning while in alternative accommodation) of the Pension Age Disability Payment Regulations due to the individual being resident in a care home for more than 28 days; or”,

(c) after sub-paragraph (3) insert—

“(4) In sub-paragraph (2)(b)(viii), “care home” has the meaning given in regulation 2 of the Pension Age Disability Payment Regulations.”.

(4) In paragraph 6 of schedule 3 (sums to be disregarded in the calculation of income other than earnings)—

(a) at the end of sub-paragraph (f) omit “or”,

(b) after (g) insert—

“(h) pension age disability payment or short-term assistance under Part 1 of the schedule of the Pension Age Disability Payment Regulations”.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

5.—(1) The Advice and Assistance (Scotland) Regulations 1996(d) are amended in accordance with paragraphs (2) and (3).

(a) S.S.I. 2024/XXX.

(b) S.I. 1992/2977 relevantly amended by S.I. 1993/2230, S.I. 1995/858, S.S.I. 2021/73, and S.S.I. 2022/31.

(c) S.S.I. 2024/XXX.

(d) S.I. 1996/2447 relevantly amended by S.I. 1997/726, S.I. 1998/724, S.I. 2008/1879, S.S.I. 2000/399, S.S.I. 2002/495, S.S.I. 2003/163, S.S.I. 2003/421, S.S.I. 2010/166, S.S.I. 2011/134, S.S.I. 2013/65, S.S.I. 2013/137, S.S.I. 2013/142, S.S.I. 2013/250, S.S.I. 2014/90, S.S.I. 2020/424, S.S.I. 2021/73, S.S.I. 2022/31, S.S.I. 2023/11, S.S.I. 2023/178, S.S.I. 2023/250 and S.S.I. 2023/258.

(2) In regulation 16 (payment of fees and outlays from property recovered or preserved) after paragraph (2)(cd) insert—

“(ce) to pension age disability payment given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(a) or short-term assistance given in accordance with Part 1 of the schedule (short-term assistance) of those Regulations.”.

(3) In schedule 2 (assessment of disposable capital and disposable income) after paragraph 5(d) (aze) insert—

“(azf) pension age disability payment given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(b) (“the 2024 Regulations”),

(azg) short-term assistance given in accordance with Part 1 of the schedule of the 2024 Regulations.”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

6. In paragraph 7 of schedule 2 (rules for computing disposable income) of the Civil Legal Aid (Scotland) Regulations 2002(c) after sub-paragraph (o) insert—

“(p) pension age disability payment given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(d) (“the 2024 Regulations”),

(q) short-term assistance given in accordance with Part 1 of the schedule of the 2024 Regulations”.

Amendment of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003

7. In article 4 (the severely mentally impaired) of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003(e), after paragraph (2)(db) insert—

“(dc) the lower or higher rate of pension age disability payment in accordance with regulation 6 (eligibility criteria: rates of Pension Age Disability Payment) of the Disability Assistance for Older People (Scotland) Regulations 2024(f), or short-term assistance in accordance with Part 1 of the schedule (short-term assistance) of those Regulations where the “earlier determination” referred to in paragraph 1(1)(a) of the schedule awarded the lower or higher rate of Pension Age Disability Payment.”.

Amendment of the National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006

8.—(1) The National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006(g) is amended in accordance with paragraphs (2) and (3).

(2) In article 2 (interpretation) after the definition of “Northern England service” insert—

““pension age disability payment” means disability assistance for older people given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(a).”.

(a) S.S.I. 2024/XXX.

(b) S.S.I. 2024/XXX.

(c) S.S.I. 2002/494 relevantly amended by S.S.I. 2023/313.

(d) S.S.I. 2024/XXX.

(e) S.S.I. 2003/176, relevantly amended by S.I. 2008/1879, S.S.I. 2013/65, S.S.I. 2013/137, S.S.I. 2013/142, S.S.I. 2021/73 and S.S.I. 2022/31.

(f) S.S.I. 2024/XXX.

(g) S.S.I. 2006/117, relevantly amended by S.S.I. 2013/65, S.S.I. 2021/73, S.S.I. 2021/122, S.S.I. 2021/175, and S.S.I. 2022/31.

(3) In article 3 (eligible persons)—

(a) after paragraph (b)(iii) insert—

“(iii) pension age disability payment, or short-term assistance given in accordance with Part 1 of the schedule (short-term assistance) of the Disability Assistance for Older People (Scotland) Regulations 2024 where the “earlier determination” referred to in paragraph 1(1)(a) of the schedule awarded the lower or higher rate of pension age disability payment,”

(b) after paragraph (ea) insert—

“(eb) persons of fare paying age who are living in a care home or hospital or similar institution and who are eligible for the lower or higher rate of pension age disability payment, or short-term assistance in accordance with Part 1 of the schedule (short-term assistance) of the Disability Assistance for Older People (Scotland) Regulations 2024 where the “earlier determination” referred to in paragraph 1(1)(a) of the schedule awarded the lower or higher rate of pension age disability payment,”

(c) in paragraph (k)—

(i) after sub-paragraph (iib) insert—

“(iic) are in receipt of pension age disability payment, or short-term assistance given in accordance with Part 1 of the schedule (short-term assistance) of the Disability Assistance for Older People (Scotland) Regulations 2024 where the “earlier determination” referred to in paragraph 1(1)(a) of the schedule awarded the lower or higher rate of pension age disability payment,”

(ii) after sub-paragraph (iiia) insert—

“(iiib) are living in a care home or hospital or similar institution and who are eligible for the lower or higher rate of pension age disability payment, or short-term assistance in accordance with Part 1 of the schedule (short-term assistance) of the Disability Assistance for Older People (Scotland) Regulations 2024 where the “earlier determination” referred to in paragraph 1(1)(a) of the schedule awarded the lower or higher rate of pension age disability payment,”

Amendment of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012

9.—(1) The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012**(b)** are amended in accordance with paragraphs (2) to (9).

(2) In regulation 2(1) (interpretation), after the definition of “payment” insert—

““pension age disability payment” means—

(a) disability assistance for older people given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024**(c)**, and

(b) where short-term assistance is being given under Part 1 of the schedule (short-term assistance) of those Regulations, the “earlier determination” referred to in paragraph 1(1)(a) of the schedule is to be deemed to continue in payment for the purposes of these Regulations,”

(3) In regulation 27(1)(j) (meaning of “income”), after head (iiib) insert—

“(iiic) pension age disability payment,”

(4) In regulation 29(11)(f) (treatment of child care charges), after head (ii) insert—

(a) S.S.I. 2024/XXX.

(b) S.S.I. 2012/319, relevantly amended by S.I. 2014/3255, S.I. 2020/354, S.S.I. 2013/49, S.S.I. 2013/142, S.S.I. 2013/218, S.S.I. 2015/46, S.S.I. 2016/81, S.S.I. 2017/41, S.S.I. 2017/326, S.S.I. 2018/211, S.S.I. 2018/295, S.S.I. 2019/29, S.S.I. 2019/133, S.S.I. 2019/325, S.S.I. 2020/413, S.S.I. 2021/73, S.S.I. 2021/122, and S.S.I. 2022/31.

(c) S.S.I. 2024/XXX.

- “(iia) pension age disability payment,”.
- (5) In regulation 48 (non-dependant deductions)—
- (a) after paragraph (6)(b)(i) insert—
- “(ia) pension age disability payment,”.
- (b) in paragraph (9)(a) after “attendance allowance,” insert “pension age disability payment,”.
- (6) In Part 3 (disability premiums) of schedule 1 (applicable amount) in paragraphs 6(2), 7(2)(a)(i), 7(2)(b)(i), 7(2)(b)(ii), 7(6)(a) and 7(7)(a) after each occurrence of “attendance allowance,” insert “pension age disability payment,”.
- (7) In schedule 2 (sums to be disregarded in the calculation of earnings) after paragraph 5(1)(a)(iii) insert—
- “(iia) pension age disability payment,”.
- (8) In Part 1 (capital to be disregarded) of schedule 4 (capital disregards) after paragraph 21(2)(aa) insert—
- “(ab) pension age disability payment,”.
- (9) In schedule 5 (amount of alternative maximum council tax reduction) in paragraph 2(a), after “attendance allowance,” insert “pension age disability payment,”.

Amendment of the Home Energy Assistance Scheme (Scotland) Regulations 2013

10. In regulation 6 (person eligible to apply for a grant) of the Home Energy Assistance Scheme (Scotland) Regulations 2013(a) after paragraph (9)(c) insert—

- “(ca) pension age disability payment given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(b),”.

Amendment of the Council Tax Reduction (Scotland) Regulations 2021

11.—(1) The Council Tax Reduction (Scotland) Regulations 2021(c) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 4 (interpretation) after the definition of “payment” insert—

““pension age disability payment” means—

- (a) disability assistance for older people given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(d), and
- (b) where short-term assistance is being given under Part 1 of the schedule (short-term assistance) of those Regulations, the “earlier determination” referred to in paragraph 1(1)(a) of that schedule is to be deemed to continue in payment for the purposes of these Regulations,”.

(3) In regulation 77 (treatment of childcare charges (applicants with no award of universal credit)) in paragraph (12)(f)—

- (a) at the end of head (x) omit “or”,
- (b) after head (xi) insert—

“or

(xii) pension age disability payment,”.

(4) In regulation 90 (non-dependant deductions)—

(a) S.S.I. 2013/148, as relevantly amended by S.S.I. 2013/253, S.S.I. 2014/40, S.S.I. 2021/73 and S.S.I. 2022/31.
 (b) S.S.I. 2024/XXX.
 (c) S.S.I. 2021/249, as relevantly amended by S.S.I. 2022/52, S.S.I. 2022/161, S.S.I. 2022/271, S.S.I. 2023/38, S.S.I. 2023/46 and S.S.I. 2023/258.
 (d) S.S.I. 2024/XXX.

- (a) in paragraph (6)(b)—
 - (i) at the end of head (v) omit “or”,
 - (ii) after head (vi) insert—
 - “, or
 - (vii) pension age disability payment.”,
 - (b) in paragraph (9)(a) after “attendance allowance,” insert “pension age disability payment,”.
- (5) In schedule 1 (applicable amount)—
- (a) in paragraph 6(4) after “attendance allowance,” insert “pension age disability payment,”,
 - (b) in paragraph 12(1)(a)—
 - (i) in sub-head (i) after “attendance allowance,” insert “pension age disability payment,”,
 - (ii) after sub-head (iiia) insert—
 - “(iiib) would be in receipt of pension age disability payment were it not for regulation 20 (effect of admission to a hospital on ongoing entitlement to pension age disability payment) of the Disability Assistance for Older People (Scotland) Regulations 2024,”,
 - (c) in paragraph 13(2)(a)(i), (2)(b)(i), (2)(b)(ii), (4)(a) and (5)(a) after “attendance allowance,” insert “pension age disability payment,”,
 - (d) in paragraph 14(1)(g) after “attendance allowance” insert “or pension age disability payment”.
- (6) In schedule 2 (amount of second adult rebate) in paragraph 2(a) after “attendance allowance,” insert “pension age disability payment,”.

Amendment of the Disability Assistance for Working Age People (Scotland) Regulations 2022

12.—(1) The Disability Assistance for Working Age People (Scotland) Regulations 2022(a) are amended in accordance with paragraphs (2) to (4).

- (2) In regulation 2 (interpretation) after the definition of “needs” insert—
 - ““Pension Age Disability Payment” means disability assistance for older people given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(b),”.
- (3) In regulation 4 (entitlement to other benefits) after paragraph (b) insert—
 - “(ba) Pension Age Disability Payment,”.
- (4) In regulation 26 (entitlement under special rules for terminal illness), after paragraph (12)(a)(ii) insert—
 - “(iia) Pension Age Disability Payment,”.

Amendment of the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023

13.—(1) The Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023(c) are amended in accordance with paragraphs (2) to (4).

- (2) In regulation 2 (interpretation)—
 - (a) after the definition of “legal detention” insert—

(a) S.S.I. 2022/54, relevantly amended by S.S.I. 2022/217.
 (b) S.S.I. 2024/XXX.
 (c) S.S.I. 2023/302.

““Pension Age Disability Payment” means disability assistance for older people given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(a),”

(b) in the definition of “qualifying disability benefit” after paragraph (d) insert—

“(da) Pension Age Disability Payment,”.

(3) In regulation 6 (residence and presence conditions)—

(a) at the end of paragraph (6)(b)(iii)(ee) omit “or”,

(b) after paragraph (6)(b)(iii)(ff) insert—

“, or

(gg) regulation 9(7), 11(2), 12 or 13 of the Disability Assistance for Older People (Scotland) Regulations 2024”,

(c) after paragraph (7)(d) insert—

“(da) Pension Age Disability Payment by virtue of regulation 18 of the Disability Assistance for Older People (Scotland) Regulations 2024,”.

(4) In regulation 23 (temporary stop in entitlement), in paragraph (4)(c)(i)—

(a) at the end of sub-head (aa) omit “or”,

(b) after sub-head (bb) insert—

“, or

(cc) regulation 30(3)(a) of the Disability Assistance for Older People (Scotland) Regulations 2024,”.

Transitional provision – extinguishment of right to apply for Attendance Allowance

14.—(1) No person may claim attendance allowance who—

(a) during the initial period for applications for pension age disability payment—

(i) in phase 1 is resident in the local authority area of Argyll and Bute, Highland, Orkney Islands, City of Aberdeen, or Shetland Islands,

(ii) in phase 2 is resident in the local authority area of Argyll and Bute, Highland, Orkney Islands, City of Aberdeen, Shetland Islands, Moray, Aberdeenshire, East Ayrshire, North Ayrshire, South Ayrshire, Western Isles, Stirling, Clackmannan, Falkirk, Fife, Angus, City of Dundee, or Perthshire and Kinross, or

(b) after the expiry of the initial period for applications—

(i) is resident in Scotland, or

(ii) is a person to whom regulation 9(3) (residence and presence conditions – individuals resident in Ireland), regulation 11 (serving members of His Majesty’s forces, civil servants and their family members) or regulation 14 (persons residing outside the United Kingdom to whom a relevant EU regulation applies) of the Pension Age Disability Payment Regulations applies.

(2) In this regulation—

“attendance allowance” means assistance payable under section 64 of the Social Security Contributions and Benefits Act 1992(b),

“initial period for applications” means the period referred to in regulation 50 (transitory provision – initial period for applications) of the Pension Age Disability Payment Regulations,

(a) S.S.I. 2024/XXX.

(b) 1992 c. 4. Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 41 of schedule 1 of the Pensions Act 2007 (c. 22), paragraph 5(2) and 5(3) of schedule 9 of the Welfare Reform Act 2012 (c. 5) and by S.S.I. 2022/335.

beginning with 21 October 2024 and ending with 21 April 2025 and references to phases of that period are to be construed in accordance with regulation 50(3) of those Regulations,
“pension age disability payment” means disability assistance for older people payable under the Pension Age Disability Payment Regulations,
“Pension Age Disability Payment Regulations” means the Disability Assistance for Older People (Scotland) Regulations 2024^(a).

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew’s House,
Edinburgh
9th May 2024

(a) S.S.I. 2024/XXX.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential and transitional provision in connection with the introduction of a new form of disability assistance, known as pension age disability payment, under section 31 of the Social Security (Scotland) Act 2018 (“the 2018 Act”). Pension age disability payment is provided for by the Disability Assistance for Older People (Scotland) Regulations 2024 (“the Pension Age Disability Payment Regulations”), along with an associated form of short-term assistance under section 36 of the 2018 Act that is payable in certain circumstances when an individual’s award of pension age disability payment is under review within the meaning of schedule 10 of that Act.

Regulations 2 to 13 make consequential amendments to secondary legislation in connection with the introduction of pension age disability payment. The amendments ensure that individuals who are entitled to pension age disability payment have the same entitlements and disregards under that legislation as individuals who are entitled to attendance allowance payable under the Social Security Contributions and Benefits Act 1992. Pension age disability payment will replace attendance allowance in Scotland for new applicants, and as such these Regulations also make provision in connection with the transition from the pre-existing statutory framework for disability benefits in Scotland to that provided for under the 2018 Act and the Pension Age Disability Payment Regulations. Regulation 14 provides, subject to some exceptions, that no person who is able to apply for pension age disability payment due to being resident in the local authority areas of Argyll and Bute, Highland, Orkney Islands, City of Aberdeen, Shetland Islands, Moray, Aberdeenshire, East Ayrshire, North Ayrshire, South Ayrshire, Western Isles, Stirling, Clackmannan, Falkirk, Fife, Angus, City of Dundee and Perthshire and Kinross during the initial period for applications may apply for attendance allowance. It also provides that no person who is able to apply for pension age disability payment due to being resident in Scotland, or otherwise meeting the residence and presence conditions in the Pension Age Disability Payment Regulations after the initial period for applications, may apply for attendance allowance.

A business and regulatory impact assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Social Security Directorate, Victoria Quay, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.

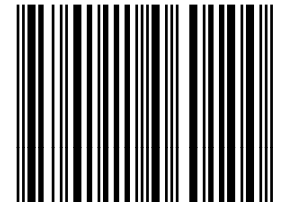
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