
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Disability Assistance for Working Age People (Scotland) Regulations 2022 and come into force on 21 March 2022.

Interpretation

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“Adult Disability Payment” means disability assistance for adults given in accordance with these Regulations,

“aid or appliance”—

(a) means any object or device which—

(i) the individual needs to be able to perform an activity, and

(ii) improves, provides or replaces the individual’s impaired physical or mental function,

(b) includes an object or device which a person without a disability might choose to use for the same function,

(c) in relation to managing toilet needs includes the use of incontinence pads, and

(d) includes a prosthesis,

“armed forces independence payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(1),

“assessment” means an assessment as described in section 13(2) of the 2018 Act,

“Attendance Allowance” means an attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992(2),

“authorised provider of vehicles” means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers,

(1) S.I. 2011/517, amended by S.I. 2013/436, S.I. 2017/247 and S.I. 2021/285.

(2) 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), and paragraph 5(2) and 5(3) of schedule 9 of the Welfare Reform Act 2012 (c. 5).

“award” means that a determination has been made that an individual is entitled to be given assistance under section 24 of the 2018 Act in accordance with these Regulations, and cognate expressions are to be construed accordingly,

“care home” means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010⁽³⁾ and includes a residential educational establishment,

“Child Disability Payment” means disability assistance for children and young people given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽⁴⁾,

“daily living component” means the daily living component of Adult Disability Payment within the meaning of regulation 5,

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of schedule 1,

“determination” and “determination of entitlement” have the meaning of “determination of entitlement” in section 25 of the 2018 Act,

“Disability Living Allowance” means a disability living allowance under—

- (a) section 71 of the Social Security Contributions and Benefits Act 1992⁽⁵⁾, or
- (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁶⁾,

“EU withdrawal agreement” means the withdrawal agreement within the meaning of section 39 of the European Union (Withdrawal Agreement) Act 2020⁽⁷⁾,

“immigration rules” means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971⁽⁸⁾,

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995⁽⁹⁾,

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen) and references to a person receiving or submitting to medical treatment are to be construed accordingly,

“mobility component” means the mobility component of Adult Disability Payment within the meaning of regulation 6,

“needs” where used in relation to an aid or appliance, or supervision, prompting or assistance from another person, means that it is reasonably required, though it may not have been available or provided,

“Personal Independence Payment”—

- (a) means personal independence payment under—
 - (i) Part 4 of the Welfare Reform Act 2012⁽¹⁰⁾, or
 - (ii) article 82 of the Welfare Reform (Northern Ireland) Order 2015⁽¹¹⁾, and
- (b) includes a concessionary payment made in lieu of personal independence payment under arrangements by the Secretary of State with the consent of the Treasury,

(3) 2010 asp 8.

(4) S.S.I. 2021/174, amended by S.S.I. 2021/122, S.S.I. 2021/320 and S.S.I. 2021/416.

(5) 1992 c. 4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and S.I. 2021/804.

(6) 1992 c. 7. Section 71 was amended by S.I. 1999/3147.

(7) 2020 c.1.

(8) 1971 c. 77.

(9) 1995 c. 46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(10) 2012 c. 5.

(11) S.I. 2015/2006.

“previous award” means an award of either or both components of Adult Disability Payment to which an individual has ceased to be entitled,

“relevant date” means the date referred to in regulation 13 or, where applicable, regulation 14 or 23,

“relevant EU Regulation” means—

- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹²⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
 - (ii) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004⁽¹³⁾ on the coordination of social security systems, or
- (b) in relation to an individual to whom the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974⁽¹⁴⁾ applies, a Regulation mentioned in paragraph (a) of this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018⁽¹⁵⁾,

“residential educational establishment” means a care home which provides education or training except for one where the costs of any qualifying services are borne wholly or partly out of public or local funds by virtue of—

- (a) section 485 of the Education Act 1996⁽¹⁶⁾ or section 14 of the Education Act 2002⁽¹⁷⁾ (which relate to grants in aid of educational services),
- (b) sections 49 or 73 of the Education (Scotland) Act 1980⁽¹⁸⁾ (which relate respectively to the power of education authorities to assist persons to take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others),
- (c) section 65 of the Further and Higher Education Act 1992⁽¹⁹⁾, sections 39 or 40 of the Higher Education and Research Act 2017⁽²⁰⁾ or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005⁽²¹⁾ (which relate respectively to the funding of further education and the administration of funds), or
- (d) section 22 of the Teaching and Higher Education Act 1998⁽²²⁾ (new arrangements for giving financial support to students),

⁽¹²⁾ OJ L 28, 30.1.1997, p.1.

⁽¹³⁾ OJ L 166, 30.4.2004, p.1.

⁽¹⁴⁾ S.I. 1974/555.

⁽¹⁵⁾ 2018 c. 16. Section 3 was amended by section 25(2) of European Union (Withdrawal Agreement) Act 2020 (c. 1).

⁽¹⁶⁾ 1996 c. 56. Section 485 was amended by S.I. 2010/1158.

⁽¹⁷⁾ 2002 c. 32. Section 14 was amended by section 59(2), (3) and (4) of the Children Act 2004 (c. 31), paragraph 23(2) and (3) of schedule 14 of Education Act 2005 (c. 18), section 15(2) of the Education Act 2011 (c. 21), S.I. 2010/1158 and S.I. 2019/1027.

⁽¹⁸⁾ 1989 c. 39. Section 49 was amended by paragraph 8(9) of schedule 10 of the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39) and section 5(1) of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15). Section 73 was amended by section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

⁽¹⁹⁾ 1992 c. 13. Section 65 was amended by section 27 of the Teaching and Higher Education Act 1998 (c. 30), section 34(1) of the Special Educational Needs and Disability Act 2001 (c. 10), paragraph 15 of schedule 11 of the Higher Education and Research Act 2017 (c. 29) and S.I. 2010/1158.

⁽²⁰⁾ 2017 c. 29.

⁽²¹⁾ 2005 asp 6. Sections 4 and 11 were amended by paragraph 8 of schedule 1 of the Post-16 Education (Scotland) Act 2013 (asp 12).

⁽²²⁾ 1998 c. 30. Section 22 was amended by section 146 and paragraph 1 of schedule 11 of the Learning and Skills Act 2000 (c. 21), paragraph 236 of schedule 6 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147 of the Finance Act 2003 (c. 14), sections 42 and 43 and paragraph 1 of schedule 7 of the Higher Education Act 2004 (c. 8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 76 of the Education Act 2011 (c. 21), section 88 of the Higher Education and Research Act 2017 (c. 29) and S.I. 2013/1881.

“short-term assistance” means short-term assistance given in accordance with Part 1 of schedule 2 of these Regulations, and

“week” means a period of 7 days.