
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 6

Entitlement under rules relating to age

Age Criteria

- 22.**—(1) Adult Disability Payment may be paid in respect of an individual who—
- (a) is at least 16 years of age, and
 - (b) has not reached the relevant age.
- (2) In this Part, “the relevant age” means—
- (a) pensionable age (within the meaning given by the rules in paragraph 1 of schedule 4 to the Pensions Act 1995(1)), or
 - (b) if higher, 65.
- (3) Where an individual was born on 29 February, their birthday is to be taken to fall on 28 February in a year which is not a leap year.
- (4) Paragraph (1)(b) is subject to the exceptions provided in regulations 23 and 24.

Exceptions: Adult Disability Payment after an interval and after reaching the relevant age

- 23.**—(1) This regulation applies where—
- (a) an individual has reached the relevant age,
 - (b) the individual makes an application for Adult Disability Payment and—
 - (i) they had a previous award of Adult Disability Payment which ended not more than one year before the day the new application is made, or
 - (ii) they had a previous award of Personal Independence Payment or Disability Living Allowance which ended not more than one year before the day the new application is made,
 - (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which the individual is entitled (or would be entitled if they met the required period condition) under the new application, and
 - (d) the Scottish Ministers determine that the entitlement under the new application results from—

(1) 1995 c. 26. Paragraph 1 of schedule 4 was amended by paragraph 39 of schedule 2 of the State Pension Credit Act 2002 (c. 16), paragraph 13 of schedule 3 of the Welfare Reform Act 2007 (c. 5), paragraph 4 of schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and section 26 and paragraph 30 of schedule 12 of the Pensions Act 2014 (c. 19).

- (i) substantially the same physical or mental condition or conditions for which the previous award was made, or
 - (ii) a new physical or mental condition or conditions which developed as a result of a condition for which the previous award was made.
- (2) Where an application for Adult Disability Payment is made in terms of paragraph (1)—
- (a) regulation 22(1)(b) does not apply, and
 - (b) paragraphs (5) and (6) apply to the determination of entitlement under the new application.
- (3) In relation to determination of entitlement under the new application, the relevant date for the purpose of regulation 10(3) is the date on which the previous award ended.
- (4) Where an individual is awarded either or both components under the new application, in relation to continued entitlement to that component or, as the case may be, those components, the relevant date for the purpose of regulation 10(3) is—
- (a) during the period of 13 weeks following the date of the new application, the date on which the previous award ended,
 - (b) in any other case, each day of the award.
- (5) Where the Scottish Ministers determine that the individual has severely limited ability to carry out mobility activities—
- (a) the individual is entitled to the enhanced rate of the mobility component only if they were entitled to that rate of that component under the previous award, and
 - (b) where the individual is not entitled to the enhanced rate of that component because of subparagraph (a), they are entitled to the standard rate of that component provided that they were entitled to that rate of that component under the previous award.
- (6) Where the Scottish Ministers determine that the individual has limited ability to carry out mobility activities, the individual is entitled to the standard rate of the mobility component only if they were entitled to that component, at either rate, under the previous award.
- (7) For the purposes of this regulation—
- (a) an award of either of the following is to be treated as though it were an award of the daily living component of Adult Disability Payment—
 - (i) the care component of Disability Living Allowance, or
 - (ii) the daily living component of Personal Independence Payment, and
 - (b) an award of either of the following is to be treated as though it were an award of the mobility component of Adult Disability Payment—
 - (i) the mobility component of Daily Living Allowance, or
 - (ii) the mobility component of Personal Independence Payment.

Persons who have reached the relevant age: other exceptions

24. Regulation 22(1)(b) does not apply where the individual has reached the relevant age, including for the purposes of any determination of their entitlement to Adult Disability Payment made after they have reached the relevant age, if they—

- (a) were entitled to an award of either or both components of Adult Disability Payment on the day preceding the day on which they reached the relevant age,
- (b) made an application for Adult Disability Payment before reaching the relevant age and that application was not determined before they reached that age, but an award of either or both components would be made in respect of the individual but for regulation 22(1)(b), or

- (c) are a transferring individual in terms of Part 3 of schedule 2.

Determination of an award after the person has reached the relevant age

25.—(1) This regulation applies where—

- (a) the individual—
 - (i) has reached the relevant age, and
 - (ii) is entitled to an award (“the original award”) of the mobility component of Adult Disability Payment, pursuant to an exception in regulation 23 or 24, and
- (b) the Scottish Ministers are under a duty to make a subsequent determination of their entitlement by way of a determination without an application under regulation 48(a).

(2) The restrictions in paragraph (3) apply in relation to a determination referred to in paragraph (1)(b) where—

- (a) the original award includes an award of the mobility component, and
- (b) the determination is being made under regulation 48(a) in relation to—
 - (i) a change of circumstances which occurred after the person reached the relevant age, or
 - (ii) a material fact which the Scottish Ministers were not previously aware of, or medical evidence received from a healthcare professional or other person approved by the Scottish Ministers, where the Scottish Ministers become aware of the material fact or medical evidence after the individual reached the relevant age.

(3) The restrictions referred to in paragraph (2) are—

- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component, and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the original award was given,
- (b) where the original mobility component award is for the enhanced rate, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the original award was given.

(4) Where the original award does not include an award of the mobility component but the individual had—

- (a) a previous award of—
 - (i) the mobility component of Adult Disability Payment,
 - (ii) the mobility component of Personal Independence Payment, or
 - (iii) the mobility component of Disability Living Allowance, and
- (b) the previous award of the component under sub-paragraph (a) ceased no more than 1 year prior to the date on which the determination referred to in paragraph (1)(b) takes or would take effect,

for the purpose of this regulation, entitlement under that previous award is to be treated as if it were under the original award.

(5) Paragraph (2)(b)(ii) does not include medical evidence in the form of a clinical judgement which was made in accordance with regulation 26(7) and (8) before the individual reached the relevant age.

(6) In this regulation, “healthcare professional” means a—

- (a) registered medical practitioner,
- (b) registered nurse, or
- (c) healthcare professional who is registered by the Health and Care Professions Council.