
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 9

Making of applications and payments and duration of eligibility

Making Payments

33.—(1) Where Adult Disability Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person.

Amount and form of Adult Disability Payment

34.—(1) The weekly rate of payment of the daily living component is, where the individual is entitled to—

- (a) the standard rate, £60.00, or
- (b) the enhanced rate, £89.60.

(2) The weekly rate of the mobility component is, where the individual is entitled to—

- (a) the standard rate, £23.70, or
- (b) the enhanced rate, £62.55.

(3) Where an individual is entitled to payment of the daily living component or the mobility component for a period shorter than one week, payment of that component is to be made at one-seventh of the relevant weekly rate, for each day of entitlement.

(4) For any week where an individual is entitled to—

- (a) the daily living component of Adult Disability Payment, and
- (b) payment of an amount in respect of constant attendance under section 104 of the Social Security Contributions and Benefits Act 1992⁽¹⁾,

the amount of the daily living component of Adult Disability Payment that is to be given to the individual is to be reduced by the amount paid under that section.

(5) For the purpose of calculating the amount of the daily living component that is to be given to the individual, in accordance with paragraph (3), where the amount in respect of constant attendance is equal to or greater than the amount of the daily living component of Adult Disability Payment, the

(1) 1992 c. 4.

value of the daily living component of Adult Disability Payment that is to be given to the individual is to be £0.

- (6) For any week where an individual is entitled to—
- (a) the mobility component of Adult Disability Payment, and
 - (b) payment of War Pensioners' Mobility Supplement within the meaning of—
 - (i) the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (“1983 Order”)(**2**),
 - (ii) the Personal Injuries (Civilians) Scheme 1983(**3**),
 - (iii) the 1983 Order by virtue of the War Pensions (Naval Auxiliary Personnel) Scheme 1964(**4**),
 - (iv) the Pensions (Polish Forces) Scheme 1964(**5**),
 - (v) the War Pensions (Mercantile Marine) Scheme 1964(**6**), or
 - (vi) an Order of Her Majesty in relation to the Home Guard dated 21 December 1964 or 22 December 1964, or in relation to the Ulster Defence Regiment dated 4 January 1971,

the amount of the mobility component of Adult Disability Payment that is to be given to the individual is to be £0.

(7) Adult Disability Payment is only to be given in the form of money, except as provided for by regulation 44 (Form of payment – giving Adult Disability Payment by way of deduction).

When an application is to be treated as made and beginning of entitlement to assistance

- 35.**—(1) An application for Adult Disability Payment is to be treated as made—
- (a) on the day it is received by the Scottish Ministers, or
 - (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).
- (2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—
- (a) would not satisfy a requirement in—
 - (i) regulation 5 (daily living component),
 - (ii) regulation 6 (mobility component),
 - (iii) regulation 11 (required period condition: daily living component),
 - (iv) regulation 12 (required period condition: mobility component),
 - (v) Part 5 (residence and presence conditions), or
 - (vi) regulation 22 (age criteria),
 if the application were treated as made on the day it was received, and
 - (b) would likely be entitled to receive Adult Disability Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,

the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as made.

(2) [S.I. 1983/883](#).
 (3) [S.I. 1983/686](#).
 (4) [S.I. 1964/1985](#).
 (5) [S.I. 1964/2007](#).
 (6) [S.I. 1964/2058](#).

(3) Where, on the basis of an application (other than where regulation 58(1) applies), a determination is made that an individual is entitled to Adult Disability Payment, the date on which entitlement begins is to be identified in accordance with paragraphs (4) to (6).

(4) Where an application is made within 8 weeks of the day on which the full name and date of birth of an individual (“the required data”) is submitted by, or on behalf of, the individual to the Scottish Ministers for the purpose of an application for Adult Disability Payment, entitlement begins on whichever is the later of the day—

- (a) on which the required data was submitted, or
- (b) identified in accordance with paragraph (2).

(5) Subject to paragraph (6), where an application is made after the 8 week period described in paragraph (4), entitlement begins on the day on which the application is treated as made in accordance with paragraph (1).

(6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made after the 8 week period described in paragraph (4), they may treat the application as having been made within that period.

(7) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Adult Disability Payment—

- (a) under paragraph (1)(a)—
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made, and
- (b) under paragraph (1)(b)—
 - (i) is deemed to begin on the day before the determination of entitlement is made provided that the requirements are satisfied, and
 - (ii) ends on the day on which the determination of entitlement is made.

Time of Payment

36. Where an award of Adult Disability Payment is made, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment—
 - (i) 4 weekly in arrears, or
 - (ii) where regulation 26 (entitlement under special rules for terminal illness) applies, weekly in advance.

Continuing Eligibility

37.—(1) Subject to paragraphs (3) and (4), a determination that an individual is entitled to Adult Disability Payment in respect of a period is to be made on the basis that the individual has an ongoing entitlement to Adult Disability Payment after the end of that period, except where paragraph (2) applies.

(2) This paragraph applies where, after the end of the period mentioned in paragraph (1), the individual no longer satisfies the eligibility rules.

(3) A determination of ongoing entitlement is made on the basis that—

- (a) the individual will continue to be entitled to Adult Disability Payment for a fixed or indefinite period as specified in the notice of determination, and

- (b) the decision that the individual is entitled to Adult Disability Payment for each subsequent 4-week period is to be taken in accordance with these Regulations, on the strength of the assumptions set out in paragraph (4).
- (4) The assumptions are that—
 - (a) the individual continues to satisfy the eligibility criteria which were satisfied to be entitled to Adult Disability Payment under the determination mentioned in paragraph (1),
 - (b) the information on which the determination mentioned in paragraph (1) was made still applies and is relevant in the individual’s case, and
 - (c) there is no change in circumstances of the individual which would require to be notified under section 56 (duty to notify change of circumstances) of the 2018 Act.

Circumstances in which assistance may be suspended

38.—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Adult Disability Payment in respect of a period by virtue of regulation 37 (continuing eligibility) is not to become entitled to be given some or all of either component or both components of that assistance at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 36 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Adult Disability Payment).

(2) Where such a decision is made in respect of an individual, payments of Adult Disability Payment to that individual are to be suspended until such a time as the Scottish Ministers decide that the individual is once again to become entitled to be given Adult Disability Payment.

(3) The Scottish Ministers may decide to suspend an individual’s Adult Disability Payment only in the circumstances where—

- (a) section 54(1A) of the 2018 Act⁽⁷⁾ applies, or
- (b) the Scottish Ministers have made arrangements (whether under section 85A of the 2018 Act, section 85B of the 2018 Act⁽⁸⁾ or otherwise) for a person to receive the Adult Disability Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Adult Disability Payment—
 - (i) in order to protect the individual from the risk of financial abuse, or
 - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Adult Disability Payment.

(4) In this regulation, “financial abuse” includes—

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property,
- (d) having money or other property misused.

Having regard to financial circumstances

39. The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend payment to the individual of some or all of either component or both components of Adult Disability Payment.

(7) 2018 asp 9. Section 54(1A) was inserted by section 12(3)(b) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

(8) Section 85A was inserted by section 1(2) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

Information to be given following suspension

40.—(1) Having made a decision to suspend an individual’s Adult Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Adult Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 41 to require the Scottish Ministers to review their decision to suspend the individual’s Adult Disability Payment.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Right to review suspension

41.—(1) An individual may require the Scottish Ministers to review their decision to suspend that individual’s Adult Disability Payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day when they received notice from the individual requiring them to review their decision,
- (b) inform the individual of the outcome of the review including reasons for their decision.

(3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Ending a suspension

42. The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information requested under section 54(1) of the 2018 Act⁽⁹⁾ and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 38(3)(a) applies and the Scottish Ministers make a determination without application under regulation 47 (consideration of entitlement after specified period), 48 (determination following change of circumstances, etc.), 49 (determination following official error – underpayments), 50 (determination following error – overpayments) or 51 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act⁽¹⁰⁾,
- (d) the circumstances mentioned in regulation 38(3)(b) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

Effect of suspension ending

43. When—

⁽⁹⁾ Section 54(1) was amended by section 12(3)(a) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

⁽¹⁰⁾ Section 54(2) was amended by section 12(3)(c) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

- (a) the suspension of an individual’s Adult Disability Payment ends, and
- (b) under the latest determination of the individual’s entitlement to Adult Disability Payment relating to the period of the suspension the individual would have become entitled to be given Adult Disability Payment during that period,

the individual is immediately to be given the Adult Disability Payment that the individual would have become entitled to be given under the determination during the period of suspension.

Form of payment – giving Adult Disability Payment by way of deduction

44.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual’s payment of Adult Disability Payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual’s agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purpose of paragraph (1), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

When an increase in level of entitlement takes effect

45.—(1) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is increased or their entitlement to a component is awarded, the change takes effect—

- (a) in the case of an increase pursuant to a determination made under regulation 48(c) or 48(d) (determination following change of circumstances etc.) on the day after the day on which Personal Independence Payment ceased to be paid in respect of the individual,
- (b) in the case of an award of entitlement to a component or an increase pursuant to a determination made in accordance with regulation 48(a) that affects their eligibility under regulation 5 (daily living component) or regulation 6 (mobility component), on the date when—

(i) if as a result of the individual reporting the change—

- (aa) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for a higher rate of the daily living or mobility component,
- (bb) if the individual reports the change within more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, or
- (cc) in any other case, the individual reports the change.

(ii) if as a result of the Scottish Ministers becoming aware that a determination of an individual’s entitlement was made in ignorance of a material fact, on the date when the Scottish Ministers make the determination.

- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 49 (determination following official error – underpayments) or on error within the meaning of regulation 50 (determination following error – overpayments), begins on the date when the earlier determination took effect, or

(d) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph (1) (b), (c) or (d).

(3) This regulation does not apply to an individual to whom regulation 26 (entitlement under special rules for terminal illness) applies.

(4) Where an individual has previously received Adult Disability Payment for a period and a determination without application has subsequently been made that the same individual is entitled to Adult Disability Payment at a higher rate for that period, that individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the subsequent determination and the value of Adult Disability Payment to which that individual was previously entitled for that period.

When a decrease in level or cessation of entitlement takes effect

46.—(1) Where, as a result of determination without an application, the amount of Adult Disability Payment payable in respect of an individual is decreased or their entitlement to a component is ceased, the change takes effect—

(a) in the case of a decrease pursuant to a determination made under regulation 48(c) or 48(d) (determination following change of circumstances etc.) on the day after the day on which Personal Independence Payment ceased to be paid in respect of the individual,

(b) in the case of a determination without application under regulation 47 or 48(a), on the date—

(i) where the individual was required to notify a change under section 56 of the 2018 Act, if the individual—

(aa) knowingly fails to notify a change, or

(bb) fails to notify the change as soon as reasonably practicable after it occurred,

the individual should have notified the Scottish Ministers of the change, or

(ii) in any other case, the Scottish Ministers make the determination,

(c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 49 (determination following official error – underpayments) or on error within the meaning of regulation 50 (determination following error – overpayments), on the date when the earlier determination took effect,

(d) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set a later date for the purposes of paragraph (1) (b), (c) or (d).