

POLICY NOTE

THE DISABILITY ASSISTANCE FOR OLDER PEOPLE (CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) (SCOTLAND) REGULATIONS 2024

SSI 2024/141

The above instrument was made in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018. The instrument is subject to the negative procedure.

The purpose of this instrument is to make consequential amendments and transitional provision as a result of the introduction of a new form of disability assistance, Pension Age Disability Payment. Pension Age Disability Payment will be introduced by the Disability Assistance for Older People (Scotland) Regulations 2024, which were made by Scottish Ministers in exercise of the powers conferred by the Social Security (Scotland) Act 2018. Pension Age Disability Payment will replace Attendance Allowance in Scotland.

These provisions are required to ensure that certain secondary legislation within the devolved competence of Scottish Ministers applies to individuals in receipt of Pension Age Disability Payment in the same way they apply to individuals who receive Attendance Allowance. This ensures that individuals who are entitled to Pension Age Disability Payment will benefit from the same exemptions, concessions and reliefs, in devolved areas, as individuals currently in receipt of Attendance Allowance.

Policy Objectives

1. The main purpose of this instrument is to make consequential amendments to reflect the transition from Attendance Allowance to Pension Age Disability Payment, so as to allow disability related passported benefits to be accessible in Scotland through Pension Age Disability Payment in the same way as they are for people currently receiving Attendance Allowance.
2. Individuals in Scotland who are over State Pension age will be eligible to apply for Pension Age Disability Payment.
3. Pension Age Disability Payment will be delivered by Social Security Scotland from 21 October 2024 with an initial application period comprising of two phases for new applications in specified local authority areas. These two phases will commence on 21 October 2024 and 24 March 2025 respectively. Social Security Scotland will then accept new applications from individuals in all other Scottish local authority areas from 22 April 2025.
4. Legislation will be introduced before the UK Parliament to enable the necessary legal changes to be made to reserved exemptions, concessions and reliefs for those in receipt of Pension Age Disability Payment. For areas within the competence of the Scottish Parliament, these Regulations make the necessary changes to Scots law to fulfil the Scottish Government's commitment to a safe and secure transition. For Pension Age Disability Payment, this means ensuring that people continue to receive access to the same payments and passported benefits as they would if they were receiving Attendance Allowance.

5. Because social security interacts with a number of devolved areas, the following allowances, disregards or premiums are within the scope of these regulations:

- The Social Security (Invalid Care Allowance) Regulations 1976
- The Council Tax (Discounts) (Scotland) Regulations 1992
- The National Assistance (Assessment of Resources) Regulations 1992
- The Advice and Assistance (Scotland) Regulations 1996
- The Civil Legal Aid (Scotland) Regulations 2002
- The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003
- The National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006
- The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012
- The Home Energy Assistance Scheme (Scotland) Regulations 2013
- The Council Tax Reduction (Scotland) Regulations 2021
- The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

6. These regulations provide that where certain Scottish regulations refer to Attendance Allowance, there is a corresponding reference to Pension Age Disability Payment or Short-term Assistance. Short-term Assistance is assistance that an individual can elect to receive if they are appealing to Social Security Scotland, or to the Social Security Chamber First-tier Tribunal for Scotland, against a decision to stop or reduce their longstanding award of entitlement to assistance under Part 2 of the Social Security (Scotland) Act 2018. Short-term Assistance is not available for first-time applicants and is unique to the Scottish social security system.

7. Because Short-term Assistance can be paid in respect of more than one form of devolved assistance, the provision makes clear that the scope of the amendments extends only to circumstances where Short-term Assistance is paid as a result of a qualifying Pension Age Disability Payment award being stopped or reduced. This fulfils a further policy objective by ensuring that individuals in receipt of Short-term Assistance benefit from the same income disregards and entitlements as they would have but for their Pension Age Disability Payment award being stopped or reduced.

8. The regulations also make transitional provision to remove the right of individuals who are over State Pension age in Scotland from applying for Attendance Allowance. This aligns with the ability to apply for Pension Age Disability Payment under The Disability Assistance for Older People (Scotland) Regulations 2024 during the initial period for applications and when applications are accepted across Scotland.

9. Finally, the regulations make provision to amend the Disability Assistance for Working Age People (Scotland) Regulations 2022 to include reference to Pension Age Disability Payment where there are currently references to Attendance Allowance. These amendments ensure that individuals cannot be entitled to Adult Disability Payment and Pension Age Disability Payment simultaneously, and introduce a reference to Pension Age Disability Payment within the regulations so that backdated payment of Adult Disability Payment under Special Rules for Terminal Illness is reduced by any Pension Age Disability Payment received during the same period.

EU Alignment Consideration

10. This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

11. The Scottish Government's Consultation on Social Security in Scotland (2016) sought views from stakeholders and the public on the high-level principles for devolved social security, which went on to inform the 2018 Act. The consultation ran from 29 July to 30 October 2016¹.

12. There were 521 responses to the consultation and the majority were broadly supportive of the proposals set out in the accompanying consultation paper. Stakeholders' primary focus was the need to take a safe and secure approach to devolving the provision of social security, ensuring that people would continue to receive the benefits they are entitled to without any disruption.

13. The Scottish Government consulted on the key eligibility criteria and the format of the devolved disability benefits in the Consultation on Disability Assistance² which ran from 5 March to 28 May 2019. The consultation received 263 responses, which were broadly supportive of the proposal set out in the accompanying consultation paper.

14. In November 2020, officials presented the Scottish Government's policy position on Pension Age Disability Payment to the Disability and Carers Benefits Expert Advisory Group (DACBEAG). This was revisited in discussions with DACBEAG in November 2021. DACBEAG provided advice on Pension Age Disability Payment in August 2022, with the Scottish Government responding in March 2023.³

15. Officials have also engaged with a variety of stakeholders on the Scottish Government's policy position on Pension Age Disability Payment. In November 2022, a meeting of the Ill Health and Disability Benefits Stakeholder Reference Group was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. A similar session was held for wider stakeholders in January 2023.

16. In April 2023, the Scottish Government held a stakeholder engagement session to assist in the development of an Equality Impact Assessment for Pension Age Disability

¹ Consultation on Social Security in Scotland - <https://consult.gov.scot/social-security/social-security-in-scotland>

² A Consultation on Improving Disability Assistance in Scotland - <https://consult.gov.scot/social-security/improving-disability-assistance>

³ Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: Response from Ministers - <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/>

Payment. This session allowed the Scottish Government to discuss impacts that have been identified across all protected characteristics, and ensured stakeholders had an opportunity to raise any further potential impacts for further consideration.

Impact Assessments

17. A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government does not believe that these consequential amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally, including Europe and the rest of the world. Similarly, the Scottish Government does not believe there will be any adverse impact on the operational business of local authorities as a result of introducing these regulations as they serve to ensure that recipients of Pension Age Disability Payment can access the same passported benefits as Attendance Allowance recipients. Therefore, these Regulations do not seek to substantively change the nature of the policy areas that the Regulations interact with.

18. The impact of the introduction of Pension Age Disability Payment, and the transfer of Attendance Allowance from the Department for Work and Pensions, is considered in the impact assessments produced and laid alongside the Disability Assistance for Older People (Scotland) Regulations 2024. These include an Equality Impact Assessment (EQIA), Island Communities Impact Assessment (ICIA), Fairer Scotland Duty Assessment (FSDA), Business and Regulatory Impact Assessment (BRIA) and a Data Protection Impact Assessment (DPIA).

Financial Effects

19. A Business and Regulatory Impact Assessment has been completed. The impact of this policy on business is limited and no immediate financial effects have been identified.

Scottish Government
Social Security Directorate

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