

# **Draft Disability Assistance for Older People (Scotland) Regulations 2024**

**Draft Policy Note**

**August 2023**

## POLICY NOTE

### DRAFT DISABILITY ASSISTANCE FOR OLDER PEOPLE (SCOTLAND) REGULATIONS 2024

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018 (the 2018 Act). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This draft instrument sets out the rules and eligibility criteria for Pension Age Disability Payment, a form of assistance to provide financial support to individuals who are over State Pension age with the additional costs related to their care needs, arising from a disability or health condition(s). This new form of disability assistance under section 31 of the 2018 Act will replace Attendance Allowance in Scotland.

The draft instrument includes provisions to include the Scottish definition of terminal illness as part of Pension Age Disability Payment, and provisions in relation to individuals who move from Scotland to reside in another part of the United Kingdom, or who move to Scotland. It further includes provisions for when short-term assistance is to be given to those who have been in receipt of Pension Age Disability Payment.

#### Policy Objectives

Pension Age Disability Payment is intended to improve outcomes for disabled people over State Pension age, by providing financial assistance to help meet the additional costs of care relating to an individual's disability or health condition(s). This includes physical and mental disabilities and health conditions which are severe enough that an individual needs someone to help look after them.

This form of assistance will replace Attendance Allowance in Scotland for individuals over State Pension age who are making a new application for disability assistance. This new Scottish Government benefit will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provisions detailing the eligibility criteria, the rates of assistance and the making of applications and payments.

Pension Age Disability Payment consists of two rates of assistance, the higher rate and the lower rate. To be eligible for the lower rate, an individual must require frequent help or constant supervision during the day, or supervision at night. To be eligible for the higher rate, an individual must require attention both throughout the day and at night, meeting the respective conditions. Individuals who are terminally ill will be automatically entitled to the higher rate. Reflecting the Scottish Government's approach to social security, Pension Age Disability Payment is intended to be person-centred, taking into account the specific needs of each individual.

The eligibility criteria for Pension Age Disability Payment broadly aligns with the eligibility criteria for Attendance Allowance. However, the Scottish Government is making improvements to the application process and the collection of supporting information about

an individual's disability, to better meet the needs of individuals entitled to Pension Age Disability Payment.

Pension Age Disability Payment will be delivered by Social Security Scotland from Autumn 2024 through a pilot and phased approach. Social Security Scotland will then accept new applications from individuals across all of Scotland in 2025.

### **Short-term Assistance**

The regulations make provision for the introduction of short-term assistance. Short-term assistance is given by the Scottish Ministers to an individual on a short-term basis under section 24 (duty to give assistance) of the 2018 Act. An individual may be eligible for short-term assistance if they have been previously entitled to Pension Age Disability Payment and, as a result of a subsequent determination, their Pension Age Disability Payment entitlement has reduced or stopped. In the event of a re-determination or appeal, individuals can apply for short-term assistance in order to continue to receive their previous payment amount until the conclusion of their re-determination or appeal.

### **Suspension of Assistance**

Provisions relating to the suspension of assistance are included in the draft regulations. Regulation 31 sets out the specific circumstances in which payment of assistance can be suspended. The regulations also set out the considerations that Scottish Ministers must make before suspending payment of assistance, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs and the circumstances in which a suspension should end.

### **Consultation**

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations. A summary of these responses can be found in the analysis of consultation responses.<sup>1</sup> The views expressed within the consultation responses helped shape the proposals for Pension Age Disability Payment. The Scottish Government published its response to the consultation findings in October 2019.<sup>2</sup>

Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation. Such changes include setting the time limit for requesting a re-determination to 42 calendar days, an increase on the Department for Work and Pension's time limit of one month. If Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-tier Tribunal for Scotland.

Following the 2019 consultation, the Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.<sup>3</sup> As part of the development of Pension Age Disability Payment, careful consideration had been given to whether to introduce a mobility component, which is not included in Attendance Allowance. It was

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<sup>1</sup> [Disability assistance in Scotland: analysis of consultation responses - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>2</sup> [Disability assistance in Scotland: response to consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>3</sup> [Disability Assistance for Older People: position paper - gov.scot \(www.gov.scot\)](http://www.gov.scot)



Scotland may seek to obtain, with the individual's consent, information held by public sector bodies about the individual's disability to make a determination of entitlement.

The right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland is provided for in the 2018 Act. Legal Assistance will continue to be available to individuals to appeal a determination of entitlement to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Pension Age Disability Payment. Current recipients of Attendance Allowance are already able to access legal aid to appeal entitlement decisions.

Scottish Government  
Social Security Directorate

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