STATUTORY INSTRUMENTS

2024 No. 1048

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

SOCIAL SECURITY

The Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Modifications) Order 2024

Made - - - -	*18th October 2024*
Coming into force - -	*21st October 2024*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998(**a**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) This Order may be cited as the Social Security (Scotland) Act 2018 (Disability Assistance) (Consequential Modifications) Order 2024.

(2) This Order comes into force on 21st October 2024.

(3) Part 2 of this Order extends to England and Wales and Scotland.

(4) Part 3 of this Order extends to England and Wales only.

(5) Part 4 of this Order extends to Northern Ireland only.

(6) This Part and Part 5 of this Order extend to England and Wales, Scotland and Northern Ireland.

(**a**) 1998 c. 46; section 104 was relevantly amended by section 12 of the Scotland Act 2012 (c. 11).

PART 2

England and Wales and Scotland

Amendment of the Social Security Contributions and Benefits Act 1992

2.—(1) The Social Security Contributions and Benefits Act 1992(**a**) is amended as follows.

(2) In section 64(1A) (attendance allowance), after paragraph (b), insert—

"(c) pension age disability payment.".

(3) In section 71(7) (disability living allowance), after "they are entitled to", insert "pension age disability payment,".

(4) In section 122(1) (interpretation of Parts 1 to 6 and supplementary provisions), after the definition of "payments by way of occupational or personal pension", insert—

""pension age disability payment" means disability assistance given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024(**b**);".

(5) In section 150(2) (interpretation of Part 10), in the definition of "attendance allowance", after paragraph (g), insert—

"(h) pension age disability payment given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024;".

Amendment of the Welfare Reform Act 2012

3.—(1) The Welfare Reform Act 2012(**c**) is amended as follows.

(2) In section 77(4) (personal independence payment), after "they are entitled to", insert "pension age disability payment,".

(3) In section 95 (interpretation of Part 4), after the definition of "mobility component", insert—

""pension age disability payment" means disability assistance given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024;".

PART 3

England and Wales

Amendment of the Social Security Contributions and Benefits Act 1992

4. In section 70(2) of the Social Security Contributions and Benefits Act 1992(**d**) (carer's allowance), after "middle or highest rate", insert "or pension age disability payment".

(**a**) 1992 c. 4; relevant amending enactments are the Pensions Act 1995 (c. 26), the Welfare Reform Act 2012 (c. 5), S.I. 2013/388, S.I. 2021/804 and S.I. 2022/335.
(**b**) S.S.I. 2024/166.
(**c**) 2012 c. 5; relevant amending instruments are S.I. 2021/804 and S.I. 2022/335.
(**d**) Relevant amending instruments are S.I. 2021/1031 and S.I. 2022/332.

PART 4

Northern Ireland

Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act 1992

5.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) is amended as follows.

(2) In section 64(1A) (attendance allowance)—

(a) after paragraph (a) insert—

"(aa) adult disability payment;"; and

(b) after paragraph (b) insert—

"(c) pension age disability payment.".

(3) In section 70(2) (carer's allowance), omit the "or" at the end of paragraph (db), and after that paragraph insert—

"(dc) a pension age disability payment by virtue of the Disability Assistance for Older People (Scotland) Regulations 2024 in circumstances where the person is resident in Northern Ireland and regulation 45(1) of those Regulations applies; or".

(4) In section 71 (disability living allowance), after subsection (6), insert—

"(7) A person is not entitled to a disability living allowance while the person is entitled to—

(a) child disability payment,

(b) adult disability payment, or

(c) pension age disability payment.".

(5) In section 121(1) (interpretation of Parts 1 to 6 and supplementary provisions), after the definition of "payments by way of occupational or personal pension", insert—

""pension age disability payment" means disability assistance given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024;".

Amendment of the Welfare Reform (Northern Ireland) Order 2015

6.—(1) The Welfare Reform (Northern Ireland) Order 2015(**b**) is amended as follows.

(2) In article 82 (personal independence payment), after paragraph (3), insert—

"(4) A person is not entitled to personal independence payment while the person is entitled to—

(a) child disability payment,

(b) adult disability payment, or

(c) pension age disability payment.".

(3) In article 100 (interpretation), insert each of the following definitions at the appropriate place—

""adult disability payment" means disability assistance given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022(**c**);";

(**a**) 1992 c. 7; relevant amending enactments are the Pensions (Northern Ireland) Act 2008 c. 1 (N.I.), the Welfare Reform (Northern Ireland) Order (S.I. 2015/2006 (N.I. 1)), S.R. 2016 No. 228 and S.R. 2016 No. 236, S.I. 2021/1301, 2022/332 and 2023/1214.

(**b**) S.I. 2015/2006 (N.I. 1).

(**c**) S.S.I. 2022/54.

""child disability payment" means disability assistance given in accordance with the Disability Assistance for Children and Young People (Scotland) Regulations 2021(**a**);";

""pension age disability payment" means disability assistance given in accordance with the Disability Assistance for Older People (Scotland) Regulations 2024;".

PART 5

England and Wales, Scotland and Northern Ireland

Amendment of the Inheritance Tax Act 1984

7.—(1) The Inheritance Tax Act 1984(**b**) is amended as follows.

(2) In section 74(4) (pre-1981 trusts for disabled persons), at the end of paragraph (c), insert—

", or

(d) is in receipt of pension age disability payment which is a category of disability assistance specifically for older people given in accordance with regulations made under section 31 of the Social Security (Scotland) Act 2018(**c**).".

(3) In section 89A (self-settlement by person expected to fall within the definition of "disabled person")(**d**)—

(a) in subsection (5)—

(i) omit the "and" at the end of paragraph (c);

(ii) at the end of paragraph (d), insert—

", and

(e) that there will be no provision made by regulations under section 31 of the SS(S)A 2018 for the non-satisfaction of eligibility criteria for pension age disability payment in respect of any period when A is undergoing treatment for renal failure in a hospital or similar institution otherwise than as an in-patient."; and

(b) in subsection (8), after the definition of "disability assistance", insert—

""pension age disability payment" means a category of disability assistance specifically for older people,".

Amendment of the Finance Act 2005

8.—(1) Schedule 1A to the Finance Act 2005(**e**) (meaning of "disabled person") is amended as follows.

(2) In paragraph 1 ("disabled person"), after sub-paragraph (b), insert—

"(ba) a person in receipt of disability assistance for older people,".

(3) After paragraph 2 (attendance allowance) insert—

"**Disability assistance for older people**

2A. A person is to be treated as a disabled person under paragraph 1(ba) if they satisfy HMRC that they would be entitled to receive disability assistance for older people but for provision made by regulations under section 31 of the SS(S)A 2018 for—

(**a**) S.S.I. 2021/174.
(**b**) 1984 c. 51.
(**c**) 2018 asp 9.
(**d**) Section 89A was added by paragraph 6(1) of Schedule 20 to the Finance Act 2006 (c. 25), and relevantly amended by paragraph 7 of Schedule 44 to the Finance Act 2013 (c. 29) and article 2(2)(a) of S.I. 2021/886.
(**e**) 2005 c. 7; Schedule 1A was added by paragraph 19 of Schedule 44 to the Finance Act 2013 (c. 29), and relevantly amended by section 291(2) of the Finance Act 2014 (c. 26).

(a) the cessation of entitlement to disability assistance for older people during periods when that person does not meet the conditions as to residence and presence prescribed by regulations made under that section, or

(b) the non-satisfaction of eligibility criteria for disability assistance for older people prescribed by regulations made under that section where a person is undergoing treatment for renal failure in hospital, or

(c) the reduction of the value of a payment of disability assistance for older people prescribed by regulations made under that section to £0 when a person is—

(i) resident in a care home,

(ii) undergoing detention in legal custody, or

(iii) in a hospital or similar institution.".

(4) In paragraph 8 (interpretation), after the definition of "disability assistance for children and young people", insert—

""disability assistance for older people" means a category of disability assistance specifically for older people,".

Amendment of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011

9. In article 2(1) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**a**) (interpretation), in the definition of "extra-costs disability benefit", after "2022,", insert "Pension Age Disability Payment given by virtue of the Disability Assistance for Older People (Scotland) Regulations 2024,".

Ian Murray
Secretary of State
Office of the Secretary of State for Scotland

18th October 2024

(**a**) S.I. 2011/517; relevant amending instruments are S.I. 2013/436 and 2021/804.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments in consequence of regulations made under section 31 (disability assistance) of the Social Security (Scotland) Act 2018 (asp 9).

This Order principally makes amendments to social security legislation governing entitlement to certain benefits as well as tax legislation in the United Kingdom in consequence of the Disability Assistance for Older People (Scotland) Regulations 2024 (S.S.I. 2024/166). These Regulations introduce arrangements for the payment of disability assistance for older people in Scotland in the form of "Pension Age Disability Payment". Pension Age Disability Payment replaces Attendance Allowance in Scotland.

This Order also makes amendments to social security legislation governing entitlement to certain benefits in Northern Ireland in consequence of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174) and the Disability Assistance for Working Age People (Scotland) Regulations 2022 (S.S.I. 2022/53).

Article 2 amends the Social Security Contributions and Benefits Act 1992 (c. 4) to prevent dual entitlement to Pension Age Disability Payment and Attendance Allowance or Disability Living Allowance, and provides that individuals entitled to Pension Age Disability Payment are entitled to a Christmas bonus.

Article 3 amends the Welfare Reform Act 2012 (c. 5) to prevent dual entitlement to Pension Age Disability Payment and Personal Independence Payment.

Article 4 amends the Social Security Contributions and Benefits Act 1992 so that receipt of Pension Age Disability Payment is among the qualifying benefits for Carer's Allowance in England and Wales.

Article 5 amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) to prevent dual entitlement to Attendance Allowance and Adult Disability Payment or Pension Age Disability Payment, as well as preventing dual entitlement to Disability Living Allowance and Child Disability Payment, Adult Disability Payment or Pension Age Disability Payment.

Article 5 also amends the same Act to ensure that Pension Age Disability Payment is treated as a qualifying benefit for Carer's Allowance in Northern Ireland for the 13-week run-on period only.

Article 6 amends the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)) to prevent dual entitlement to Personal Independence Payment and Pension Age Disability Payment, Child Disability Payment or Adult Disability Payment.

Article 7 amends the Inheritance Act 1984 (c. 51) so that provisions on pre-1981 trusts for disabled persons cover individuals who are in receipt of Pension Age Disability Payment. The same Act is also amended in relation to self-settlements by those expected to meet the definition of a "disabled person" in the future, where such a person is receiving treatment for renal failure in a hospital or similar institution, other than as an in-patient.

Article 8 amends Schedule 1A to the Finance Act 2005 (c. 7) to ensure that individuals in receipt of Pension Age Disability Payment receive the same treatment as those in receipt of Attendance Allowance.

Article 9 amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517) to ensure that Pension Age Disability Payment is treated the same way as other forms of disability assistance given under section 31 of the Social Security (Scotland) Act 2018 for the purposes of entitlement to Armed Forces Independence Payment.

A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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