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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 54**

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

**PART 8**

**Effect of time spent in care homes, hospital and legal detention**

**Effect of admission to a care home on ongoing entitlement to daily living component**

**27.**—(1) This regulation applies where an individual who has an ongoing entitlement to the daily living component of Adult Disability Payment becomes a resident of a care home.

(2) Subject to paragraphs (4) and (5) and regulation 29, on the day after the day on which the individual has been resident in a care home for 28 days, and for so long as the individual continues to reside in such a home, the value of the daily living component of Adult Disability Payment that is to be given to the individual is to be £0 instead of the values set out in regulation 34 (amount and form of Adult Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(4) Paragraph (2) does not apply to a resident in a care home, where the full costs of any qualifying services are met—

- (a) entirely out of the resources of the individual for whom the qualifying services are provided,
- (b) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
- (c) entirely out of the resources of another person (other than a local authority) or assistance from a charity.

(5) For the purposes of this regulation, an individual is not resident in a care home during any period when the individual is being looked after by a local authority and—

- (a) has been placed temporarily in a private dwelling with a family, relative or some other suitable person while aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995<sup>(1)</sup> by virtue of being a child in need within the meaning of section 93(4)(a)(ii) (impairment of health), or 93(4)(a)(iii) (disability) of that Act, or
- (b) is accommodated in a care home outside the United Kingdom, where the costs of any qualifying services are met wholly or partly by a local authority exercising its powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom)<sup>(2)</sup>.

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(1) 1995 c. 36.  
(2) 2004 asp. 4.

(6) For the purposes of this regulation and regulation 32 (entitlement beginning while in alternative accommodation), reference to an individual being “looked after by a local authority” is to be construed, as the case may be, in accordance with—

- (a) section 17(6) of the Children (Scotland) Act 1995(3),
- (b) section 105(4) of the Children Act 1989(4), or
- (c) article 25 of the Children (Northern Ireland) Order 1995(5).

#### Commencement Information

**II** [Reg. 27](#) in force at 21.3.2022, see [reg. 1](#)

### Effect of admission to hospital on ongoing entitlement to Adult Disability Payment

**28.**—(1) This regulation applies where an individual who is aged 18 years or older and has an ongoing entitlement to either component of Adult Disability Payment—

- (a) is undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds.

(2) Subject to regulation 29, on the day after the day on which the individual has been an in-patient in a hospital or similar institution for 28 days, and for so long as the individual continues to be an in-patient in such an institution, the value of each component of Adult Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 34 (amount and form of Adult Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(4) For the purposes of paragraph (1), the costs of treatment, accommodation or any related services are borne out of public funds if the individual is undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under—
  - (i) the National Health Service Act 2006(6),
  - (ii) the National Health Service (Wales) Act 2006(7), or
  - (iii) the National Health Service (Scotland) Act 1978(8), or
- (b) a hospital or similar institution maintained or administered by the Defence Council(9).

(5) This regulation does not apply where an individual was under the age of 18 on the day on which they began their current period undergoing medical or other treatment as an in-patient at a hospital or similar institution.

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(3) Section 17(6) was amended by paragraph 9(4)(b) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), paragraph 2(4) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1) and S.S.I. 2013/211.

(4) 1989 c. 41. Section 105 was relevantly amended by S.I. 2016/413.

(5) S.I. 1995/755, amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11).

(6) 2006 c. 41.

(7) 2006 c. 42.

(8) 1978 c. 29.

(9) The Defence Council was established by section 1 of the Defence (Transfer of Functions) Act 1964 (c. 15).

**Commencement Information**

**I2** [Reg. 28](#) in force at 21.3.2022, see [reg. 1](#)

**Exception: Hospices**

**29.**—(1) Regulations 27(2) and 28(2) do not apply where the individual is residing in a hospice and has a terminal illness.

(2) In this regulation, “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

- (a) a health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978<sup>(10)</sup>) in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006<sup>(11)</sup>) in England,
- (c) a hospital in Wales vested in—
  - (i) an NHS trust,
  - (ii) a Local Health Board, or
  - (iii) the Welsh Ministers,for the purpose of functions under the National Health Service (Wales) Act 2006<sup>(12)</sup>,
- (d) a hospital maintained or administered by the Defence Council, or
- (e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs.

(3) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006, and

“Local Health Board” means a body established under section 11 of that Act.

**Commencement Information**

**I3** [Reg. 29](#) in force at 21.3.2022, see [reg. 1](#)

**Effect of legal detention on ongoing entitlement to Adult Disability Payment**

**30.**—(1) This regulation applies where an individual who has an ongoing entitlement to Adult Disability Payment begins a period of legal detention.

(2) For the purposes of this regulation, an individual is to be treated as though they are not in legal detention on any day on which they are an in-patient in a hospital or in a hospice.

(3) On the day after the day on which the individual has been in legal detention for 28 days, and for so long as the individual continues to be in legal detention, instead of the values set out in regulation 34 (amount and form of Adult Disability Payment)—

<sup>(10)</sup> 1978 c. 29. Section 108(1) was relevantly amended by paragraph 6(a) of schedule 6 of the Health Services Act 1980 (c. 53) and paragraph 19(22)(b) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19).

<sup>(11)</sup> 2006 c. 41. Section 275 was relevantly amended by paragraph 138(2)(b) of schedule 4(12) of the Health and Social Care Act 2012 (c. 7).

<sup>(12)</sup> 2006 c. 42.

- (a) where the individual is aged 18 or over, the value of each component of Adult Disability Payment that is to be given to the individual is to be £0, or
  - (b) where the individual is aged 16 or 17, the value of the daily living component of Adult Disability Payment that is to be given to the individual is to be £0.
- (4) The 28 days referred to in paragraph (3) may comprise two or more separate periods, provided there is no more than one year between each period.
- (5) Paragraph (3) of this regulation does not apply to an individual where—
- (a) the individual is undergoing legal detention outside the United Kingdom, and
  - (b) in similar circumstances in Scotland, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

#### **Commencement Information**

**I4** [Reg. 30](#) in force at 21.3.2022, see [reg. 1](#)

#### **Calculation of periods of time spent in a care home, hospital or legal detention**

**31.**—(1) Subject to paragraphs (3) to (6), a period during which an individual is—

- (a) resident in a care home for the purpose of regulation 27,
- (b) an in-patient in hospital or similar institution for the purpose of regulation 28,
- (c) in legal detention for the purpose of regulation 30, or
- (d) resident in a care home, an in-patient in a hospital or similar institution, or in legal detention for the purposes of regulation 32,

is to be determined in accordance with this regulation.

(2) Such a period is to be taken to—

- (a) begin on the day after the day on which the individual enters the place, and
- (b) end on the day before the day on which the individual leaves the place.

(3) Where an individual takes a period of leave from a place mentioned in paragraph (1), the days on which the individual begins and returns from leave are not to be counted as days of residence in that place.

(4) Days constituting a period of leave are not to be counted as days of residence in a place.

(5) Where an individual enters a place (“the second place”) under paragraph (1) as a result of transfer from another place (“the first place”) under that paragraph—

- (a) the day of transfer is to be counted as a day of residence in the second place, and
- (b) for the purposes of calculating when the individual has been in the second place for 28 days for the purposes of regulations 27(2), 28(2) and 30(3)—
  - (i) the days that they were resident in the first place are to be treated as days of residence in the second place,
  - (ii) if they were resident in the first place for more than 28 days, the individual is to be treated as though they have been resident in the second place for 28 days on the day before the day of transfer, and

(c) the period of residence in the first place is deemed to end on the day on which the period of residence in the second place ends.

(6) For the purposes of this regulation, ‘days of residence’ means—

- (a) days resident in a care home in terms of regulation 27 or 32,
- (b) days as an in-patient in hospital or similar institution in terms of regulation 28 or 32, and
- (c) days in legal detention in terms of regulation 30 or 32.

#### Commencement Information

**I5** Reg. 31 in force at 21.3.2022, see [reg. 1](#)

#### Entitlement beginning while in alternative accommodation

**32.**—(1) This regulation applies where an individual is resident in a care home, an in-patient in a hospital or similar institution, or in legal detention on the day on which their entitlement to Adult Disability Payment begins.

(2) On and after that day, and for so long as the individual continues to reside in a place mentioned in paragraph (1), instead of the values set out in regulation 34 (amount and form of Adult Disability Payment), the individual is to be given the value of £0—

- (a) where the individual is resident in a care home, in respect of the daily living component of Adult Disability Payment,
- (b) where the individual is—
  - (i) aged 18 or over,
  - (ii) undergoing medical or other treatment as an in-patient in a hospital or similar institution, and
  - (iii) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds within the meaning of regulation 28(4),in respect of each component of Adult Disability Payment, or
- (c) where the individual is in legal detention and—
  - (i) aged 18 or over, in respect of either component of Adult Disability Payment,
  - (ii) aged 16 or 17, in respect of the daily living component of Adult Disability Payment.

(3) Paragraphs (1) and (2) do not apply where the individual is a resident in a care home, and the full costs of any qualifying services are met—

- (a) entirely out of the resources of the individual for whom the qualifying services are provided,
- (b) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
- (c) entirely out of the resources of another person (other than a local authority) or assistance from a charity.

(4) For the purposes of this regulation, an individual is not resident in a care home during any period when the individual is being looked after by a local authority and—

- (a) has been placed temporarily in a private dwelling with a family, relative or some other suitable person while aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995(13) by virtue of being a child in need within the meaning of section 93(4)(a)(ii) (impairment of health), or 93(4)(a)(iii) (disability) of that Act, or

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**Changes to legislation:** There are currently no known outstanding effects for the The Disability Assistance for Working Age People (Scotland) Regulations 2022, PART 8. (See end of Document for details)

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- (b) is accommodated in a care home outside the United Kingdom, where the costs of any qualifying services are met wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom)(**14**).

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**Commencement Information**

**I6** [Reg. 32](#) in force at 21.3.2022, see [reg. 1](#)

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(14) 2004 asp. 4.

**Changes to legislation:**

There are currently no known outstanding effects for the The Disability Assistance for Working Age People (Scotland) Regulations 2022, PART 8.