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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Social Security (Personal Independence Payment) Regulations 2013**

**PART 7**

Payability when person is residing in certain accommodation or is detained in custody

**Care home residents**

**28.**—(1) Subject to paragraph (3) and regulation 30, no amount of personal independence payment which is attributable to the daily living component is payable in respect of C for any period during which C meets the condition in section 85(2) of the Act (care home residents: costs of qualifying services borne out of public or local funds).

(2) For the purpose of section 85(2) of the Act the specified enactments are —

- (a) Part 3 of the National Assistance Act 1948(1) (Local Authority Services);
- (b) sections 59 and 59A of the Social Work (Scotland) Act 1968(2) (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision and grants in respect of secure accommodation for children respectively);
- (c) the Mental Health Act 1983(3);
- (d) the Community Care and Health (Scotland) Act 2002(4);
- (e) the Mental Health (Care and Treatment) (Scotland) Act 2003(5); or
- (f) any other enactment relating to persons under a disability or to young persons or to education or training except —
  - (i) section 485 of the Education Act 1996(6) (grants in aid of educational services or research);
  - (ii) section 14 of the Education Act 2002(7) (power of Secretary of State or National Assembly for Wales to give financial assistance for purposes related to education or children etc.);

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(1) 1948 c.29.

(2) 1968 c.49. Section 59 was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 10(7); the Regulation of Care (Scotland) Act 2001 (asp 8), Part 6, section 72(c); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 25(4) and Schedule 4, paragraph 1(6) and the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(15). Section 59A was inserted by the Children Act 1975 (c.72), section 72 and amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 30 and Schedule 10, Part 1.

(3) 1983 c.20.

(4) 2002 asp 5.

(5) 2003 asp 13.

(6) 1996 c.56. Section 485 was amended by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158) ('the Integration of Functions Order'), Schedule 2, paragraph 7(1) and (3).

(7) 2002 c.32. Section 14 was amended by the Children Act 2004 (c.31) section 59; the Education Act 2005 (c.18), Schedule 14, paragraph 23, the Education Act 2011(c.21), section 15 and the Integration of Functions Order, Schedule 2, paragraph 11.

- (iii) section 49 of the Education (Scotland) Act 1980(8) (power of education authorities to assist persons to take advantage of educational facilities) or section 73 of that Act (power of Scottish Ministers to make grants to education authorities and others)(9);
  - (iv) section 65 of the Further and Higher Education Act 1992(10) (administration of funds by councils);
  - (v) section 4 of the Further and Higher Education (Scotland) Act 2005(11) (general duty of Scottish Ministers to provide support for funding of higher education) or section 11 of that Act (administration of funds); and
  - (vi) section 22 of the Teaching and Higher Education Act 1998(12) (new arrangements for giving financial support to students).
- (3) Subject to paragraph (4), paragraph (1) does not apply in the case of C, where C is a person -
- (a) who has not reached the age of 18 and to whom -
    - (i) section 17(10)(b) of the Children Act 1989(13) (provision of services for children in need: impaired health and development) or section 93(4)(a)(ii) of the Children (Scotland) Act 1995(14) (interpretation: children in need of care and attention due to impaired health and development) applies because C's health is likely to be significantly impaired, or further impaired, without the provision of services for C; or
    - (ii) section 17(10)(c) of the Children Act 1989 (provision of services for children in need: disability) or section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to disability) applies; or
  - (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 320 of the Education Act 1996(15) (provision outside England and Wales for certain children) or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004(16) (attendance at establishments outwith the United Kingdom).
- (4) Paragraph (3)(a) only applies during any period in which the local authority looking after C places C in a private dwelling with a family, or with a relative of C, or with some other suitable person.

### Hospital in-patients

**29.—**(1) Subject to regulation 30, no amount of personal independence payment which is attributable to either component is payable in respect of C for any period during which C meets the condition in section 86(2) of the Act (in-patient treatment: costs of treatment, accommodation and related services borne out of public funds).

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- (8) 1980 c.44. Section 49 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(9).
  - (9) Section 73 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 73 and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). The power of the Secretary of State was transferred to Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53 (general transfer of functions).
  - (10) 1992 (c. 13). Section 65 was amended by the Disability Discrimination Act 1995 (c. 50), section 30(6), the Teaching and Higher Education Act 1998 (c. 30), section 27, the Special Educational Needs and Disability Act 2001 (c. 10) sections 34(1) and 24(6) and Schedule 9 and the Integration of Functions Order, Schedule 2, paragraph 5(1).
  - (11) 2005 asp 6.
  - (12) 1998 c.30. Section 22 was amended by the Learning and Skills Act 2000 (c.21), section 146(2)(a) and Schedule 11, paragraph 1; the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6(2), paragraph 236; the Finance Act 2003 (c.14), section 147(3); the Higher Education Act 2004 (c.8), sections 42(1) and 43(2) and Schedule 7, paragraph 1, the Apprenticeship, Skills, Children and Learning Act 2009 (c.22), section 257(2) and the Education Act 2011 (c.21), section 76.
  - (13) 1989 c.41.
  - (14) 1995 c.36.
  - (15) 1996 c.56. Section 320 was amended by the Integration of Functions Order, Schedule 2, paragraph 7(2).
  - (16) 2004 asp 4.

(2) For the purposes of section 86(3) of the Act, the costs of treatment, accommodation or any related services are borne out of public funds if C 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<sup>(17)</sup>;
  - (ii) the National Health Service (Wales) Act 2006<sup>(18)</sup>; or
  - (iii) the National Health Service (Scotland) Act 1978<sup>(19)</sup>; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

### **Payability exceptions: care homes and hospitals**

**30.**—(1) Subject to the following paragraphs, regulation 28(1) or, as the case may be, regulation 29(1) does not apply to C in respect of the first 28 days of any period during which C is someone to whom that regulation applies.

(2) Where, on the day on which C’s entitlement to personal independence payment commences, C meets the condition in section 85(2) of the Act (care home residents: costs of qualifying services borne out of public or local funds) or section 86(2) of the Act (in-patient treatment: costs of treatment, accommodation and related services borne out of public funds), paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to satisfy that condition.

(3) Regulation 28 or, as the case may be, regulation 29 does not apply where C is residing in a hospice and is terminally ill, and the Secretary of State has been informed that C is terminally ill—

- (a) on a claim for personal independence payment;
- (b) on an application for a revision or a supersession of an award of personal independence payment; or
- (c) in writing in connection with an award of, or a claim for, or an application for a revision or a supersession of an award of, personal independence payment.

(4) In paragraph (3), “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 in England (within the meaning of section 275<sup>(20)</sup> of the National Health Service Act 2006);
- (b) 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>(21)</sup>;
- (c) a health service hospital in Scotland (within the meaning of section 108(1)<sup>(22)</sup> of the National Health Service (Scotland) Act 1978);

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<sup>(17)</sup> 2006 c.41.

<sup>(18)</sup> 2006 c.42.

<sup>(19)</sup> 1978 c.29.

<sup>(20)</sup> Section 275 was amended by the Health and Social Care Act 2012 (c.7), Schedule 4, paragraph 138(1) and (2). There are other amendments not relevant to these Regulations.

<sup>(21)</sup> 2006 c. 42.

<sup>(22)</sup> Section 108 was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 6(a) and the National Health Service and Community Care Act 1990 (c. 16), Schedule 9, paragraph 19(2)(b). There are other amendments not relevant to these Regulations.

- (d) a hospital maintained by the Defence Council; or
  - (e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.
- (5) Regulation 28(1) does not apply to a case where, during any period the total cost of the qualifying services(23) are met —
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person’s own resources and partly with assistance from another person or a charity(24); or
  - (b) on that person’s behalf by another person or a charity.
- (6) 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.
- (7) In the application of these Regulations to Scotland, “charity” is to be construed as if these Regulations were an enactment to which section 7 of the Charities Act 2011(25) (application in relation to Scotland) applied.

### Prisoners and detainees

**31.**—(1) Subject to paragraph (2), section 87 of the Act (prisoners and detainees) does not apply in respect of the first 28 days of any period during which C is a person to whom that section would otherwise apply.

(2) Where, on the day on which C’s entitlement to personal independence payment commences, C is a person to whom that section applies, paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to be a person to whom that section applies.

(3) Section 87 of the Act does not apply to C in respect of any period after the conclusion of criminal proceedings as a result of which C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the conditions set out in paragraph (4).

(4) The conditions referred to in paragraph (3) are —

- (a) C is -
  - (i) detained under section 45A of the Mental Health Act 1983(26) (power of higher courts to direct hospital admission) or section 47(27) of that Act (removal to hospital of persons serving sentences of imprisonment, etc); and
  - (ii) being detained on or before the day which the Secretary of State has certified to be C’s release date within the meaning of section 50(3) of that Act(28); or
- (b) C is being detained under-

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(23) See section 85(4) of the Act for the meaning of ‘qualifying services’.

(24) See section 1(1) of the Charities Act 2011 (c. 25) for the meaning of ‘charity’ in England and Wales.

(25) 2011 c. 25.

(26) 1983 c.20. Section 45A was inserted by the Crime (Sentences) Act 1997 (c.43), section 46 and amended by the Criminal Justice Act 2003 (c.44), Schedule 32, paragraphs 37 to 39 and Schedule 37, Part 7 and by the Mental Health Act 2007 (c.12), sections 4(1) and (6) and 10(1) and (8) and Schedule 1, paragraphs 1 and 9 and Schedule 11, Part 1.

(27) Section 47 was amended by the Crime (Sentences) Act 1997, section 56(2) and Schedule 6; the Domestic Violence, Crime and Victims Act 2004 (c.28), Schedule 10, paragraph 18; the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 97(1) and (2)(a) and the Mental Health Act 2007, section 4(7) and Schedule 1, paragraphs 1 and 10 and Schedule 11, Part 1.

(28) Section 50(3) was substituted by the Criminal Justice Act 2003, section 294(3).

- (i) section 59A of the Criminal Procedure (Scotland) Act 1995<sup>(29)</sup> (hospital direction);  
or
  - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(30)</sup> (transfer of prisoners for treatment of mental disorder).
- (5) For the purposes of this regulation —
- (a) “hospital or similar institution” means any place (not being a prison, a detention centre, a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
  - (b) criminal proceedings against any person are deemed to be concluded upon that person being found insane in those proceedings with the effect that that person cannot be tried or the trial of that person cannot proceed.
- (6) Section 87 of the Act does not apply to C where —
- (a) C is undergoing imprisonment or detention in legal custody outside Great Britain; and
  - (b) in similar circumstances in Great Britain, C would have been excepted from the application of that section by virtue of the operation of any provision of this regulation.

### Periods of residence

- 32.**—(1) In these Regulations, a “period of residence” is a period during which C —
- (a) meets the condition in section 85(2) of the Act (care home residents);
  - (b) meets the condition in section 86(2) of the Act (hospital in-patients); or
  - (c) is a person who is undergoing imprisonment or detention in legal custody.
- (2) Subject to paragraph (3), for the purposes of section 87 of the Act and regulations 28 and 29, a period of residence —
- (a) begins on the day after the day on which C enters a care home, hospital or similar institution or commences a period of imprisonment or detention in legal custody; and
  - (b) ends on the day before the day on which C leaves a care home, hospital or similar institution or on which a period of imprisonment or detention in legal custody ends.
- (3) Where, immediately following a period of residence for the purpose of sub-paragraph (a), (b) or (c) of paragraph (1), C commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which C leaves the care home, hospital or similar institution or, as the case may be, on which the period of imprisonment or detention ends.
- (4) Subject to paragraph (5), for the purposes of regulation 30(1) and 31(1), —
- (a) two or more distinct periods of residence separated by an interval not exceeding 28 days, or by two or more such intervals, are to be treated as a continuous period equal in duration to the total duration of such distinct periods and ending on the last day of the later or last such period; and
  - (b) any period or periods to which those regulations refer are to be taken into account and aggregated with any other period referred to in those regulations.
- (5) Paragraph (4) is, where the periods referred to in sub-paragraph (a) of that paragraph are both or all periods to which section 87 applies, to have effect as if -
- (a) the words ‘subject to paragraph (5)’ and ‘regulation 30(1) and’ were omitted;

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<sup>(29)</sup> 1995 c.46, section 59A was substituted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Schedule 4, paragraph 8(6).

<sup>(30)</sup> 2003 asp 13.

- (b) the reference to '28 days' in sub-paragraph (a) of that paragraph read 'one year'; and
- (c) the references to 'those regulations' in sub-paragraph (b) read 'that regulation' and the reference to 'refer' read 'refers'.