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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**The Disability Assistance for Children and Young People (Scotland) Regulations 2021**

**PART 6**

**Making of applications and payments and duration of eligibility**

**Making payments**

**22.**—(1) Where Child Disability Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person.

**Amount and form of Child Disability Payment**

**23.**—(1) The weekly rate of payment of the care component is where the individual is entitled to—

- (a) the highest rate, £87.65,
- (b) the middle rate, £58.70, or
- (c) the lowest rate, £23.20.

(2) The weekly rate of payment of the mobility component is where the individual is entitled to—

- (a) the higher rate, £61.20, or
- (b) the lower rate, £23.20.

(3) Where an individual is entitled to payment of the care component or the mobility component for a period shorter than one week, payment of that component is to be made at one-seventh of the relevant weekly rate, for each day of entitlement.

(4) For any week where an individual is entitled to—

- (a) the care component of Child Disability Payment, and
- (b) payment of an amount in respect of constant attendance under section 61 of the Social Security Act 1975(1),

the amount of the care component of Child Disability Payment that is to be given to the individual is to be reduced by the amount paid under that section.

(5) For the purpose of calculating the amount of the care component that is to be given to the individual, in accordance with paragraph (4), where the amount in respect of constant attendance is

equal to or greater than the amount of the care component of Child Disability Payment the value of Child Disability Payment that is to be given to the individual is to be £0.

- (6) For any week where an individual is entitled to—
- (a) the mobility component of Child Disability Payment, and
  - (b) payment of War Pensioners' Mobility Supplement within the meaning of—
    - (i) the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (“1983 Order”)(**2**),
    - (ii) the Personal Injuries (Civilians) Scheme 1983(**3**),
    - (iii) the 1983 Order by virtue of the War Pensions (Naval Auxiliary Personnel) Scheme 1964(**4**),
    - (iv) the Pensions (Polish Forces) Scheme 1964(**5**),
    - (v) the War Pensions (Mercantile Marine) Scheme 1964(**6**), or
    - (vi) an Order of Her Majesty in relation to the Home Guard dated 21 December 1964 or 22 December 1964, or in relation to the Ulster Defence Regiment dated 4 January 1971,

the amount of the mobility component of Child Disability Payment that is to be given to the individual is to be £0.

- (7) For each week in the period of 8 weeks ending with the death of the individual—
- (a) the amount of Child Disability Payment that is to be given to that individual is the relevant weekly rate of each component to which the individual is entitled in that week, multiplied by two, and
  - (b) any provision in these Regulations reducing the amount to £0 has no effect.

(8) Child Disability Payment may only be given as money, except as provided for by regulation 27(1) (form of payment – giving Child Disability Payment by way of deduction).

#### **When an application is to be treated as made and beginning of entitlement to assistance**

- 24.**—(1) An application for Child Disability Payment is to be treated as made—
- (a) on the day it is received by the Scottish Ministers, or
  - (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).
- (2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—
- (a) would not satisfy the requirement in—
    - (i) regulation 4 (age criteria),
    - (ii) regulations 5 to 9 (residence and presence conditions etc.),
    - (iii) regulation 10 (entitlement to other benefits),
    - (iv) regulation 11 (care component criterion: lowest, middle or highest rate of care component),
    - (v) regulation 12 (mobility requirements: lower rate mobility component),

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(2) [S.I. 1983/883](#).  
 (3) [S.I. 1983/686](#).  
 (4) [S.I. 1964/1985](#).  
 (5) [S.I. 1964/2007](#).  
 (6) [S.I. 1964/2058](#).

- (vi) regulation 13 (mobility requirements: higher rate mobility component), or
  - (vii) regulation 16 (entitlement to care component when undergoing dialysis),
- if the application were treated as made on the day it was received, and

- (b) would likely be entitled to receive Child Disability Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,

the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as having been made.

(3) Where, on the basis of an application, a determination is made that an individual is entitled to Child Disability Payment, the date on which entitlement begins is to be identified in accordance with paragraphs (4) to (6).

(4) Where an application is made within 6 weeks of the day on which the full name and date of birth of an individual (“the required data”) is submitted by, or on behalf of, the individual to the Scottish Ministers for the purpose of an application for Child Disability Payment, entitlement begins on whichever is the later of the day—

- (a) on which the required data was submitted, or
- (b) identified in accordance with paragraph (2).

(5) Subject to paragraph (6), where an application is made after the 6 week period described in paragraph (4), entitlement begins on the day on which the application is treated as having been made in accordance with paragraph (1).

(6) Where the Scottish Ministers are satisfied that there is good reason why an application was made after the 6 week period described in paragraph (4), they may treat the application as having been made within that period.

(7) For the purposes of section 38(3) (application for assistance) of the 2018 Act, the period covered by an application for Child Disability Payment—

- (a) under paragraph (1)(a)—
  - (i) begins on the day on which the application is treated as having been made, and
  - (ii) ends on the day on which the determination of entitlement is made, and
- (b) under paragraph (1)(b)—
  - (i) is deemed to begin on the day before the determination is made provided that the requirements are satisfied, and
  - (ii) ends on the day on which the determination is made.

### **Time of payment**

**25.** Where an award of Child Disability Payment is made, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment—
  - (i) 4 weekly in arrears, or
  - (ii) where regulation 15 (entitlement under special rules for terminal illness) applies, weekly in advance.

### **Continuing eligibility**

**26.—**(1) Subject to paragraphs (3) and (4), a determination that an individual is entitled to Child Disability Payment in respect of a period is to be made on the basis that the individual has an ongoing

entitlement to Child Disability Payment after the end of that period, except where paragraph (2) applies.

(2) This paragraph applies where, after the end of the period mentioned in paragraph (1), the individual no longer satisfies the eligibility rules.

(3) A determination of ongoing entitlement is made on the basis that—

- (a) the individual will continue to be entitled to Child Disability Payment for a fixed or indefinite period as specified in the notice of determination, and
- (b) the decision that the individual is entitled to Child Disability Payment for each subsequent 4-week period is to be taken in accordance with these Regulations, on the strength of the assumptions set out in paragraph (4).

(4) The assumptions are that—

- (a) the individual continues to satisfy the eligibility criteria which were satisfied to be entitled to Child Disability Payment under the determination mentioned in paragraph (1),
- (b) the information on which the determination mentioned in paragraph (1) was made still applies and is relevant in the individual’s case, and
- (c) there is no change in circumstances of the individual which would require to be notified under section 56 (duty to notify change of circumstances) of the 2018 Act.

#### **Form of payment – giving Child Disability Payment by way of deduction**

27.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual’s payment of Child Disability Payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual’s agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purpose of paragraph (1), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

#### **When an increase in level of entitlement takes effect**

28.—(1) Where, as a result of a determination without an application, the amount of Child Disability Payment payable in respect of an individual is increased or their entitlement to a component is awarded, the changed entitlement begins—

- (a) in the case of an increase pursuant to a determination made under regulation 31(d) (determination following change of circumstances etc.) on the day after the day on which Disability Living Allowance ceased to be paid in respect of the individual,
- (b) in the case of an award of entitlement to a component or an increase pursuant to a determination made in accordance with regulation 31(a) as a result of the individual reporting a change that affects their eligibility under regulation 11 (care component criterion: lowest, middle or highest rate of care component), 12 (mobility requirements: lower rate mobility component) or 13 (mobility requirements: higher rate mobility component), on the date when—
  - (i) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component,

- (ii) if the individual reports the change more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, or
  - (iii) in any other case, the individual reports the change.
  - (c) in the case of an earlier determination which was based on official error within the meaning of regulation 32 (determination following official error - underpayments) or on error within the meaning of regulation 33 (determination following error – overpayments), begins on the date when the earlier determination took effect, or
  - (d) in any other case, on the date when Scottish Ministers make the determination.
- (2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph 1(b), (c) or (d).
- (3) This regulation does not apply to an individual to whom regulation 15 (entitlement under special rules for terminal illness) applies.

**When a decrease in level or cessation of entitlement takes effect**

**29.**—(1) Where, as a result of a determination without an application, the amount of Child Disability Payment payable in respect of an individual is decreased or their entitlement to a component is ceased, the changed entitlement begins—

- (a) in the case of a decrease pursuant to a determination made under regulation 31(d) (determination following change of circumstances etc.) on the day after the day on which Disability Living Allowance ceased to be paid in respect of the individual,
  - (b) in the case of a determination without application under regulation 31(a), on the date when—
    - (i) if the individual knowingly fails to notify a change that the individual was required to notify under section 56 of the 2018 Act, the individual should have notified Scottish Ministers of the change,
    - (ii) in any other case, the Scottish Ministers make the determination,
  - (c) in the case of an earlier determination which was based on official error within the meaning of regulation 32 (determination following official error - underpayments) or on error within the meaning of regulation 33 (determination following error – overpayments), begins on the date when the earlier determination took effect,
  - (d) in any other case, on the date when Scottish Ministers make the determination.
- (2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set a later date for the purposes of paragraph 1(b), (c) or (d).