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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 4**

Entitlement under special rules for terminal illness and when undergoing dialysis

**Entitlement under special rules for terminal illness**

**15.**—(1) An individual who has a terminal illness is—

- (a) to be treated as satisfying the conditions for the highest rate of the care component of Child Disability Payment in regulation 11(5)(a), and
- (b) from the date on which the individual reaches the age of 3, to be treated as satisfying the conditions for the higher rate of the mobility component in regulation 13.

(2) Paragraph (1) applies regardless of—

- (a) the period of time for which the individual has had the terminal illness, and
- (b) any period of time spent by the individual in a hospital or hospice while in receipt of the assistance.

(3) Subject to paragraphs (4) and (5), the individual's entitlement to the rates referred to in paragraph (1) begins on the date on which—

- (a) the individual's application for Child Disability Payment was made, where the application included information about the individual's terminal illness,
- (b) the Scottish Ministers became aware of the individual's terminal illness (whether as a result of the individual notifying a change in circumstances or otherwise), where the individual was previously awarded, and has an ongoing entitlement to, Child Disability Payment, on the basis of a determination that the individual was entitled to the care component or the mobility component or both in relation to a condition other than terminal illness, or
- (c) the clinical judgement was made in accordance with paragraphs (6) and (7) ("the judgement"),

whichever is the earlier.

(4) Where the judgement mentioned in paragraph (3)(c) is dated not more than 26 weeks earlier than whichever date in paragraph (3)(a) or (b) applies ("the relevant date"), the Scottish Ministers have the power, when making their determination, to specify that an individual's entitlement begins—

- (a) up to a maximum of 26 weeks prior to the relevant date, and
- (b) on or after the day these Regulations come into force.

(5) Where the judgement mentioned in paragraph (3)(c)—

- (a) is dated more than 26 weeks earlier than whichever date in paragraph (3)(a) or (b) applies ("the relevant date"), and

(b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (6) and (7),

an individual's entitlement can only begin—

(c) up to a maximum of 26 weeks prior to the relevant date, and

(d) on or after the day these Regulations come into force.

(6) For the purpose of this regulation, an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to Child Disability Payment if it is the judgement of an appropriate healthcare professional that the individual has a progressive disease that can reasonably be expected to cause the individual's death.

(7) Subject to paragraph (8), an appropriate healthcare professional exercising the judgement described in paragraph (6) must have regard to the guidance prepared and made publicly available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(8) Where regulation 9 (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies to the individual, an appropriate healthcare professional mentioned in paragraph (9)(b) need not have regard to the guidance mentioned in paragraph (7) where it would not be reasonable in the circumstances to insist on the judgement being formed with regard to that guidance.

(9) In this regulation, "an appropriate healthcare professional" means—

(a) a registered medical practitioner or a registered nurse who is—

(i) involved in the diagnosis or care of the individual, and

(ii) acting in their professional capacity, or

(b) where regulation 9 applies to the individual, a person who—

(i) has equivalent qualifications to a registered medical practitioner or a registered nurse in an EEA state, Gibraltar or Switzerland,

(ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that EEA state, Gibraltar or Switzerland, and

(iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(10) Where an individual has received Child Disability Payment for a period and a determination is subsequently made that that individual is entitled to Child Disability Payment at a higher rate for that period by virtue of this regulation, any payment of Child Disability Payment to be made for that period will be reduced by any Child Disability Payment already paid to that individual for that period.