
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

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

PART 5

Effect of time spent in care homes and in legal detention

Effect of admission to a care home on ongoing entitlement to care component

17.—(1) This regulation applies where an individual who has an ongoing entitlement to the care component of Child Disability Payment, becomes a resident of a care home.

(2) Subject to paragraphs (4) and (5), on and 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 care component of Child Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 23 (amount and form of Child 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—
 - (i) under the age of 16, or
 - (ii) aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995⁽¹⁾ 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 by a local authority exercising its powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004⁽²⁾.

(1) 1995 c.36.

(2) 2004 asp 4.

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Disability Assistance for Children and Young People (Scotland) Regulations 2021* ISBN 978-0-11-104977-8

(6) For the purposes of this regulation and regulation 20 (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⁾.

(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, 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).