
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

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

PART 1

Introductory and interpretation

Interpretation - general

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“armed forces independence payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽¹⁾,

“authorised provider of vehicles” means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers,

“award” means that a determination has been made that an individual is entitled to be given assistance under section 24 of the 2018 Act in accordance with these Regulations, and cognate expressions are to be construed accordingly,

“bodily functions” means the normal actions of any organ of the body, including the brain, or of a number of organs acting together,

“care component” means the care component of Child Disability Payment within the meaning of regulation 11,

“care home” means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010⁽²⁾ and includes a residential educational establishment,

“Child Disability Payment” means disability assistance for children and young people given in accordance with section 31 of the 2018 Act,

“determination” or “determination of entitlement” has the meaning in section 25 of the 2018 Act,

“Disability Living Allowance” means a disability living allowance under—

- (a) section 71 of the Social Security Contributions and Benefits Act 1992⁽³⁾, or
- (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁴⁾,

“EEA State” means—

- (a) any member state of the European Union, or

⁽¹⁾ S.I. 2011/517, amended by S.I. 2013/436, S.I. 2017/247 and S.I. 2020/213.

⁽²⁾ 2010 asp 8.

⁽³⁾ 1992 c.4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).

⁽⁴⁾ 1992 c.7. Section 71 was amended by S.I. 1999/3147.

- (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992⁽⁵⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽⁶⁾, as modified or supplemented from time to time,

“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⁽⁷⁾) in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006⁽⁸⁾) 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⁽⁹⁾,
- (d) a hospital maintained or administered by the Defence Council⁽¹⁰⁾, or
- (e) an institution similar to a hospital mentioned in any of the preceding paragraphs,

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995⁽¹¹⁾ but does not include detention under—

- (a) section 59A⁽¹²⁾ of that Act, or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹³⁾, or
- (c) section 45A, 47 or 50(3) of the Mental Health Act 1983⁽¹⁴⁾,

“mobility component” means the mobility component of Child Disability Payment within the meaning of regulations 12 and 13,

“personal independence payment” means personal independence payment under—

- (a) Part 4 of the Welfare Reform Act 2012⁽¹⁵⁾, or
- (b) article 82 of the Welfare Reform (Northern Ireland) Order 2015⁽¹⁶⁾,

“qualifying services” means accommodation, board and personal care,

“relevant EU Regulation” means—

- (a) one of the following Regulations—

(5) Command Paper 2073 and OJ L 1, 3.1.1994, p.3.

(6) Command Paper 2183 and OJ L 1, 3.1.1994, p.572.

(7) 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).

(8) 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).

(9) 2006 c.42.

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

(11) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (asp 7).

(12) Section 59A was inserted by section 6(1) of the Crime and Punishment (Scotland) Act 1997 (c.48) and amended by paragraph 8(6) of schedule 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) and section 44(2) of the Mental Health (Scotland) Act 2015 (asp 9).

(13) 2003 asp 13, amended by sections 12(2) and 34(2) of the Mental Health (Scotland) Act 2015 (asp 9).

(14) 1983 c.20, relevantly amended by section 46 and paragraph 1 of schedule 6 of the Crime (Sentences) Act 1997 (c.43), section 294(3) and paragraph 1 of schedule 37(7) of the Criminal Justice Act 2003 (c.44) and section 10(8), paragraph 18 of schedule 10 of the Domestic Violence, Crime and Victims Act 2004 (c.28), paragraph 97 of schedule 16 of the Armed Forces Act 2006 (c.52) and paragraph 2 of schedule 10 and paragraph 1 of schedule 11(1) of the Mental Health Act 2007 (c.12).

(15) 2012 c.5.

(16) S.I. 2015/2006.

- (i) Council Regulation (EC) No 1408/71 of 14 June 1971(17) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
- (ii) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004(18) on the coordination of social security systems, or
- (b) in relation to an individual to whom the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974(19) applies, a Regulation mentioned in paragraph (a) of this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018(20),

“residential educational establishment” means a care home which provides education or training except for one where the costs of any qualifying services are borne wholly or partly out of public or local funds by virtue of—

- (a) section 485 of the Education Act 1996(21), section 14 of the Education Act 2002(22) or section 73 of the Education (Scotland) Act 1980(23) (which relate to grants in aid of educational services),
- (b) sections 49(24) or 73 of the Education (Scotland) Act 1980 (which relate respectively to the power of education authorities to assist persons to take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others),
- (c) section 65(25) of the Further and Higher Education Act 1992, sections 39 or 40 of the Higher Education and Research Act 2017(26) or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005(27) (which relate respectively to the funding of further education and the administration of funds), or
- (d) section 22 of the Teaching and Higher Education Act 1998(28),

“transferring individual” has the meaning set out in paragraph 7 of the schedule, and

“week” means a period of 7 days.

(17) OJ L 28, 30.1.1997, p.1.

(18) OJ L 166, 30.4.2004, p.1.

(19) S.I. 1974/555

(20) 2018 c.16, relevantly amended by section 25(2) of European Union (Withdrawal Agreement) Act 2020 (c.1).

(21) 1996 c.56, amended by S.I. 2010/1158.

(22) 2002 c.32, amended by section 59(2), (3) and (4) of the Children Act 2004 (c.31), paragraph 23(2) and (3) of schedule 14 of Education Act 2005 (c.18), section 15(2)(a) and (b) of the Education Act 2011 (c.21), S.I. 2010/1158 and S.I. 2019/1027.

(23) 1980 c.44, amended by section 73 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

(24) Section 49 was amended by paragraph 8(9) of schedule 10 of the Self-Governing Schools etc. (Scotland) Act 1989 (c.39) and section 5(1) of the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15).

(25) 1992 c.13, amended by section 27 of the Teaching and Higher Education Act 1998 (c.30), section 34(1) of the Special Educational Needs and Disability Act 2001 (c.10), paragraph 15 of schedule 11 of the Higher Education and Research Act 2017 (c.29) and S.I. 2010/1158.

(26) 2017 c.29.

(27) 2005 asp 6. Sections 4 and 11 were amended by paragraph 8 of schedule 1 of the Post-16 Education (Scotland) Act 2013 (asp 12).

(28) 1998 c.30, amended by section 146 and paragraph 1 of schedule 11 of the Learning and Skills Act 2000 (c.21), paragraph 236 of schedule 6 of the Income Tax (Earnings and Pensions) Act 2003 (c.1), section 147 of the Finance Act 2003 (c.14), sections 42 and 43 and paragraph 1 of schedule 7 of the Higher Education Act 2004 (c.8), section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 76 of the Education Act 2011 (c.21), and section 88 of the Higher Education and Research Act 2017 (c.29) and S.I. 2013/1881.