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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 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<sup>(1)</sup> 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<sup>(2)</sup>.

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(1) 1995 c.36.

(2) 2004 asp 4.

(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).

### **Effect of legal detention on ongoing entitlement to care component**

**18.**—(1) This regulation applies where an individual who has an ongoing entitlement to the care component of Child Disability Payment is in legal detention.

(2) On and after the day on which an individual has been in legal detention for 28 days, and for so long as the individual continues to be in legal detention, the value of the care component of Child Disability Payment that is to be given to the individual is to be £0, instead of the values set out in regulation 23 (amount and form of Child Disability Payment).

### **Calculation of periods of time spent in a care home or in legal detention**

**19.**—(1) Subject to paragraphs (2) and (3), a period during which an individual is resident in a care home for the purpose of regulation 17 or in legal detention for the purpose of regulation 18 is to be taken to—

- (a) begin on the day after the day on which the individual enters the care home or legal detention, and
- (b) end on the day before the day on which the individual leaves the care home or legal detention.

(2) Where an individual who is resident in a care home takes a period of leave from the home, the days on which the individual begins and returns from leave are not to be counted as days of residence in the home.

(3) Days constituting a period of leave are not to be counted as days of residence in a care home.

(4) Where an individual enters or returns to a care home as a result of a transfer from a hospital or a hospice, or from another care home, the day of transfer is to be counted as a day of residence in a care home.

(5) Where an individual enters legal detention as a result of a transfer from a hospital or a hospice, or from a care home, the day of transfer is to be counted as a day in legal detention.

### **Entitlement beginning while in alternative accommodation**

**20.**—(1) This regulation applies where an individual is resident in a care home or in legal detention on the day on which entitlement to Child Disability Payment begins.

(2) On and after that day, and for so long as the individual continues to reside in a care, or be in legal detention, 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) Paragraphs (1) and (2) do not apply where the costs of any qualifying services whilst resident in a care home are met—

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(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).

- (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.
- (4) 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,
    - (ii) aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995 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.

#### **Entitlement to care component of Child Disability Payment while an in-patient**

**21.** For the avoidance of doubt, any period when an individual is an in-patient in a hospice or hospital, has no effect on the individual's entitlement to the care component of Child Disability Payment.