
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

**The Disability Assistance for Older
People (Scotland) Regulations 2024**

PART 8

Effect of time spent in care homes, hospital and legal detention

Effect of admission to a care home on ongoing entitlement to Pension Age Disability Payment

19.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment becomes a resident of a care home.

(2) Subject to paragraph (4) and regulation 21 on the day 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 Pension Age Disability Payment that is to be given to the individual is to be £0 instead of the values set out in regulation 26 (amount and form of Pension Age 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.

Effect of admission to hospital on ongoing entitlement to Pension Age Disability Payment

20.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment—

- (a) is undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds.

(2) Subject to regulation 21, on the day after the day on which the individual has been an in-patient in a hospital or similar institution for 28 days, and for so long as the individual continues to be an in-patient in such an institution, the value of Pension Age Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 26 (amount and form of Pension Age 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) For the purposes of paragraph (1), the costs of treatment, accommodation or any related services are borne out of public funds if the individual is undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under—
 - (i) the National Health Service Act 2006,
 - (ii) the National Health Service (Wales) Act 2006, or
 - (iii) the National Health Service (Scotland) Act 1978, or
 - (iv) the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991, or
- (b) a hospital or similar institution maintained or administered by the Defence Council⁽¹⁾.

Exception: Hospices

21.—(1) Regulations 19(2) and 20(2) do not apply where the individual is residing in a hospice and has a terminal illness.

(2) In this regulation, “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) in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006⁽²⁾) 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⁽³⁾,

- (d) a hospital or similar institution within the meaning of Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991, or
- (e) a hospital maintained or administered by the Defence Council, or
- (f) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs.

(3) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006, and

“Local Health Board” means a body established under section 11 of that Act.

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

(2) 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).

(3) 2006 c. 42.

Effect of legal detention on ongoing entitlement to Pension Age Disability Payment

22.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment begins a period of legal detention.

(2) For the purposes of this regulation, an individual is to be treated as though they are not in legal detention on any day on which they are an in-patient in a hospital or in a hospice.

(3) On the day after the day on which the individual has been in legal detention for 28 days, and for so long as the individual continues to be in legal detention, instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment) the value of Pension Age Disability Payment that is to be given to the individual is to be £0.

(4) The 28 days referred to in paragraph (3) may comprise two or more separate periods, provided there is no more than one year between each period.

(5) Paragraph (3) of this regulation does not apply to an individual where—

- (a) the individual is undergoing legal detention outside the United Kingdom, and
- (b) in similar circumstances in Scotland, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

Calculation of periods of time spent in a care home, hospital or legal detention

23.—(1) Subject to paragraphs (3) to (6), a period during which an individual is—

- (a) resident in a care home for the purpose of regulation 19,
- (b) an in-patient in hospital or similar institution for the purpose of regulation 20,
- (c) in legal detention for the purpose of regulation 22, or
- (d) resident in a care home, an in-patient in a hospital or similar institution, or in legal detention for the purposes of regulation 24,

is to be determined in accordance with this regulation.

(2) Such a period is to be taken to—

- (a) begin on the day after the day on which the individual enters the place, and
- (b) end on the day before the day on which the individual leaves the place.

(3) Where an individual takes a period of leave from a place mentioned in paragraph (1), the days on which the individual begins and returns from leave are not to be counted as days of residence in that place.

(4) Days constituting a period of leave are not to be counted as days of residence in a place.

(5) Where an individual enters a place (“the second place”) under paragraph (1) as a result of transfer from another place (“the first place”) under that paragraph—

- (a) the day of transfer is to be counted as a day of residence in the second place,
- (b) for the purposes of calculating when the individual has been in the second place for 28 days for the purposes of regulations 19(2), 20(2) and 22(3)—
 - (i) the days that they were resident in the first place are to be treated as days of residence in the second place,
 - (ii) if they were resident in the first place for more than 28 days, the individual is to be treated as though they have been resident in the second place for 28 days on the day before the day of transfer, and
- (c) the period of residence in the first place is deemed to end on the day on which the period of residence in the second place ends.

(6) For the purposes of this regulation, “days of residence” means days—

- (a) resident in a care home in terms of regulation 19 or 24,
- (b) as an in-patient in hospital or similar institution in terms of regulation 20 or 24, and
- (c) in legal detention in terms of regulation 22 or 24.

Entitlement beginning while in alternative accommodation

24.—(1) This regulation applies where an individual is resident in a care home, an in-patient in a hospital or similar institution, or in legal detention on the day on which their entitlement to Pension Age Disability Payment begins.

(2) On and after that day, and for so long as the individual continues to reside in a place mentioned in paragraph (1), instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment), in respect of Pension Age Disability Payment, the individual is to be given the value of £0 where the individual is—

- (a) resident in a care home,
- (b) undergoing medical or other treatment as an in-patient in a hospital or similar institution where any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds within the meaning of regulation 20(4), or
- (c) in legal detention.

(3) Paragraphs (1) and (2) do not apply where the individual is a resident in a care home, and 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.