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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 174**

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

**PART 6**

**Making of applications and payments and duration of eligibility**

**When an increase in level of entitlement takes effect**

**28.**—(1) Where, as a result of a determination without an application, the amount of Child Disability Payment payable in respect of an individual is increased or their entitlement to a component is awarded, the [<sup>F1</sup>change takes effect] —

- (a) in the case of an increase pursuant to a determination made under regulation [<sup>F2</sup>31(c) or (d)] (determination following change of circumstances etc.) on the day after the day on which Disability Living Allowance ceased to be paid in respect of the individual,
- (b) in the case of an award of entitlement to a component or an increase pursuant to a determination made in accordance with regulation 31(a) <sup>F3</sup>... that affects their eligibility under regulation 11 (care component criterion: lowest, middle or highest rate of care component), 12 (mobility requirements: lower rate mobility component) or 13 (mobility requirements: higher rate mobility component), on the date when—

[<sup>F4</sup>(i) if as a result of the individual reporting the change—

(aa) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component,

(bb) if the individual reports the change more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of the care or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month,

(cc) in any other case, the individual reports the change,

(ii) if as a result of the Scottish Ministers becoming aware that an earlier determination of an individual's entitlement was made in ignorance of a material fact, on the date when the Scottish Ministers make the determination.]

- (c) in the case of an earlier determination which was based on official error within the meaning of regulation 32 (determination following official error - underpayments) or on error within the meaning of regulation 33 (determination following error – overpayments), begins on the date when the earlier determination took effect, or

[<sup>F5</sup>(ca) in the case of a determination made in accordance with regulation 31(a), where the period that an individual has been—

(i) for the purpose of regulation 17, resident in a care home,

- (ii) for the purposes of regulation 18, in legal detention, or
  - (iii) for the purposes of regulation 20, resident in a care home or in legal detention,
- has come to an end, on the day on which the individual leaves that place, or]

(d) in any other case, on the date when Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph 1(b), (c) or (d).

[<sup>F6</sup>(2A) Where an individual has previously received Child Disability Payment for a period and a determination without application has been subsequently made that the same individual is entitled to Child Disability Payment at a higher rate for that period, that individual will be entitled to the difference between the value of entitlement to Child Disability Payment under the subsequent determination and the value of Child Disability Payment to which that individual was previously entitled for that period.]

(3) This regulation does not apply to an individual to whom regulation 15 (entitlement under special rules for terminal illness) applies.

#### Textual Amendments

- F1** Words in reg. 28(1) substituted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **13(a)**
- F2** Words in reg. 28(1)(a) substituted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **13(b)**
- F3** Words in reg. 28(1)(b) omitted (22.11.2021) by virtue of The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **13(c)(i)**
- F4** Reg. 28(1)(b)(i)(ii) substituted for reg. 28(1)(b)(i)-(iii) (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **13(c)(ii)**
- F5** Reg. 28(1)(ca) inserted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **18(3)**
- F6** Reg. 28(2A) inserted (22.11.2021) by The Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 (S.S.I. 2021/416), regs. 1, **13(d)**

#### Commencement Information

- I1** Reg. 28 in force at 26.7.2021, see **reg. 1**

**Changes to legislation:**

There are currently no known outstanding effects for the The Disability Assistance for Children and Young People (Scotland) Regulations 2021, Section 28.