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SCOTTISH STATUTORY INSTRUMENTS

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**2022 No. 41**

**The Scottish Child Payment Regulations 2020  
and the Disability Assistance for Children and  
Young People (Scotland) Regulations 2021  
(Miscellaneous Amendments) Regulations 2022**

**Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**

3.—(1) The Disability Assistance for Children and Young People (Scotland) Regulations 2021(1) are amended in accordance with paragraphs (2) to (11).

(2) In regulation 2 (interpretation - general) after the definition of “residential educational establishment” insert—

““short-term assistance” means short-term assistance given in accordance with Part 1 of the schedule.”.

(3) In regulation 5(2) (residence and presence conditions)—

(a) for paragraph (1)(c) substitute—

“(c) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(3),”.

(b) after paragraph (5) insert—

“(5A) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where they are a person who—

(a) is lawfully working in the United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union(4) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,

(b) is a member of the family of, and living with, a person specified in subparagraph (a), or

(c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.”.

(c) for paragraph (10) substitute—

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(1) S.S.I. 2021/174, amended by S.S.I. 2021/320 and S.S.I. 2021/416.

(2) Paragraph (10A) was inserted and paragraph 11 was amended by S.S.I. 2021/320.

(3) 1999 c. 33.

(4) OJ C 202, 7.6.2016, p.146.

“(10) The past presence condition in paragraph (1)(e) does not apply where an individual—

- (a) has a terminal illness within the meaning of regulation 15, or
- (b) is an individual described in paragraph (7).”

(d) in paragraph (10A)—

- (i) at the end of sub-paragraph (b) omit “or”,
- (ii) after sub-paragraph (c) insert—

“(d) has been granted refugee status or humanitarian protection under the immigration rules, or

(e) has leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules”

(e) in paragraph (11) for “paragraphs (10) and (10A)” substitute “paragraph (10A)”.

(4) In regulation 6 (interpretation – residence and presence conditions), in the definition of “child in care” for “5(7)(a)”, in both places where it appears, substitute “5(7)(b)”.

(5) In regulation 17(5)(b) (effect of admission to a care home on ongoing entitlement to care component) after “met” insert “wholly or partly”.

(6) In regulation 20(4)(b) (entitlement to care component beginning while in alternative accommodation) after “met” insert “wholly or partly”.

(7) In regulation 23(4)(b) (amount and form of Child Disability Payment) for “section 61 of the Social Security Act 1975” substitute “section 104 of the Social Security Contributions and Benefits Act 1992(5)”.

(8) In regulation 24 (when an application is to be treated as made and beginning of entitlement to assistance) omit paragraph (2)(a)(iii).

(9) After regulation 26 (continuing eligibility) insert—

**“Circumstances in which assistance may be suspended**

**26A.**—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Child Disability Payment in respect of a period by virtue of regulation 26 is not to become entitled to be given some or all of either component or both components of that assistance at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 25 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Child Disability Payment).

(2) Where such a decision is made in respect of an individual, payments of Child Disability Payment to that individual are to be suspended until such time as the Scottish Ministers decide that the individual is once again to become entitled to be given Child Disability Payment.

(3) The Scottish Ministers may decide to suspend an individual’s Child Disability Payment only in the circumstances where—

- (a) section 54(1A) of the 2018 Act applies,
- (b) the Scottish Ministers have made arrangements (whether under section 85A of the 2018 Act, section 85B of the 2018 Act or otherwise) for a person to receive the Child Disability Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Child Disability Payment—

- (i) in order to protect the individual from the risk of financial abuse, or
- (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Child Disability Payment, or
- (c) the individual has reached the age of 16 years and there is no arrangement to make that payment to—
  - (i) the individual, or
  - (ii) another person to be used for the benefit of the individual.
- (4) In this regulation “financial abuse” includes—
  - (a) having money or other property stolen,
  - (b) being defrauded,
  - (c) being put under pressure in relation to money or other property,
  - (d) having money or other property misused.

#### **Having regard to financial circumstances**

**26B.** The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend payment to the individual of some or all of either component or both components of Child Disability Payment.

#### **Information to be given following suspension**

**26C.**—(1) Having made a decision to suspend an individual’s Child Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Child Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 26D to require the Scottish Ministers to review their decision.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

#### **Right to review suspension**

**26D.**—(1) An individual may require the Scottish Ministers to review a decision to suspend that individual’s Child Disability Payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day on which they received notice from the individual requiring them to review their decision,
- (b) inform the individual of the outcome of the review including the reasons for it.

(3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

### Ending a suspension

**26E.** The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information requested under section 54(1) of the 2018 Act and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 26A(3)(a) applies and the Scottish Ministers make a determination without application under regulation 30 (consideration of entitlement after specified period), 31 (determination following change of circumstances, etc.), 32 (determination following official error – underpayments), 33 (determination following error – overpayments) or 34 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act,
- (d) the circumstances mentioned in regulation 26A(3)(b) or (c) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

### Effect of suspension ending

**26F.** When—

- (a) the suspension of an individual’s Child Disability Payment ends, and
- (b) under the latest determination of the individual’s entitlement to Child Disability Payment relating to the period of the suspension the individual would have become entitled to be given Child Disability Payment during that period,

the individual is immediately to be given the Child Disability Payment that the individual would have become entitled to be given under the determination during the period of suspension.”.

(10) In regulation 32(2) (determination following official error – underpayments) at the end of sub-paragraph (a) for “or” substitute “and”.

(11) In paragraph 1 of the schedule (entitlement to short-term assistance)—

- (a) in sub-paragraph (1B)—
  - (i) after “where” insert “a determination of”,
  - (ii) after “sub-paragraph (1A)(a)” insert “and the individual had previously been awarded short-term assistance on the basis that their entitlement to Child Disability Payment was under review by the First-tier Tribunal prior to it making the decision that has been set aside,”,

(b) after sub-paragraph (1B) insert—

“(1C) Where the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of the subsequent determination of the individual’s entitlement to Child Disability Payment mentioned in sub-paragraph (1) (a), and the Scottish Ministers had previously determined, pursuant to an application made by the individual, that the individual was not entitled to short-term assistance on the basis that the subsequent determination was not under review, the Scottish Ministers are to make a determination without application of the individual’s entitlement to short-term assistance.”.