
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

**The Disability Assistance for Working
Age People (Scotland) Regulations 2022**

PART 8

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

Effect of admission to a care home on ongoing entitlement to daily living component

27.—(1) This regulation applies where an individual who has an ongoing entitlement to the daily living component of Adult Disability Payment becomes a resident of a care home.

(2) Subject to paragraphs (4) and (5) and regulation 29, 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 the daily living component of Adult Disability Payment that is to be given to the individual is to be £0 instead of the values set out in regulation 34 (amount and form of Adult 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 aged between 16 and 18 and receiving services under Part II of the Children (Scotland) Act 1995⁽¹⁾ 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 wholly or partly by a local authority exercising its powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom)⁽²⁾.

(1) 1995 c. 36.
(2) 2004 asp. 4.

(6) For the purposes of this regulation and regulation 32 (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⁾.

(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. Section 105 was 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).