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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Social Security (Personal Independence Payment) Regulations 2013**

**PART 7**

Payability when person is residing in certain accommodation or is detained in custody

**Care home residents**

**28.**—(1) Subject to paragraph (3) and regulation 30, no amount of personal independence payment which is attributable to the daily living component is payable in respect of C for any period during which C meets the condition in section 85(2) of the Act (care home residents: costs of qualifying services borne out of public or local funds).

(2) For the purpose of section 85(2) of the Act the specified enactments are —

- (a) Part 3 of the National Assistance Act 1948(1) (Local Authority Services);
- (b) sections 59 and 59A of the Social Work (Scotland) Act 1968(2) (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision and grants in respect of secure accommodation for children respectively);
- (c) the Mental Health Act 1983(3);
- (d) the Community Care and Health (Scotland) Act 2002(4);
- (e) the Mental Health (Care and Treatment) (Scotland) Act 2003(5); or
- (f) any other enactment relating to persons under a disability or to young persons or to education or training except —
  - (i) section 485 of the Education Act 1996(6) (grants in aid of educational services or research);
  - (ii) section 14 of the Education Act 2002(7) (power of Secretary of State or National Assembly for Wales to give financial assistance for purposes related to education or children etc.);

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(1) 1948 c.29.

(2) 1968 c.49. Section 59 was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 9, paragraph 10(7); the Regulation of Care (Scotland) Act 2001 (asp 8), Part 6, section 72(c); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 25(4) and Schedule 4, paragraph 1(6) and the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(15). Section 59A was inserted by the Children Act 1975 (c.72), section 72 and amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 30 and Schedule 10, Part 1.

(3) 1983 c.20.

(4) 2002 asp 5.

(5) 2003 asp 13.

(6) 1996 c.56. Section 485 was amended by the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158) ('the Integration of Functions Order'), Schedule 2, paragraph 7(1) and (3).

(7) 2002 c.32. Section 14 was amended by the Children Act 2004 (c.31) section 59; the Education Act 2005 (c.18), Schedule 14, paragraph 23, the Education Act 2011(c.21), section 15 and the Integration of Functions Order, Schedule 2, paragraph 11.

- (iii) section 49 of the Education (Scotland) Act 1980<sup>(8)</sup> (power of education authorities to assist persons to take advantage of educational facilities) or section 73 of that Act (power of Scottish Ministers to make grants to education authorities and others)<sup>(9)</sup>;
  - (iv) section 65 of the Further and Higher Education Act 1992<sup>(10)</sup> (administration of funds by councils);
  - (v) section 4 of the Further and Higher Education (Scotland) Act 2005<sup>(11)</sup> (general duty of Scottish Ministers to provide support for funding of higher education) or section 11 of that Act (administration of funds); and
  - (vi) section 22 of the Teaching and Higher Education Act 1998<sup>(12)</sup> (new arrangements for giving financial support to students).
- (3) Subject to paragraph (4), paragraph (1) does not apply in the case of C, where C is a person -
- (a) who has not reached the age of 18 and to whom -
    - (i) section 17(10)(b) of the Children Act 1989<sup>(13)</sup> (provision of services for children in need: impaired health and development) or section 93(4)(a)(ii) of the Children (Scotland) Act 1995<sup>(14)</sup> (interpretation: children in need of care and attention due to impaired health and development) applies because C's health is likely to be significantly impaired, or further impaired, without the provision of services for C; or
    - (ii) section 17(10)(c) of the Children Act 1989 (provision of services for children in need: disability) or section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to disability) applies; or
  - (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 320 of the Education Act 1996<sup>(15)</sup> (provision outside England and Wales for certain children) or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(16)</sup> (attendance at establishments outwith the United Kingdom).
- (4) Paragraph (3)(a) only applies during any period in which the local authority looking after C places C in a private dwelling with a family, or with a relative of C, or with some other suitable person.

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(8) 1980 c.44. Section 49 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(9).

(9) Section 73 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 73 and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). The power of the Secretary of State was transferred to Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53 (general transfer of functions).

(10) 1992 (c. 13). Section 65 was amended by the Disability Discrimination Act 1995 (c. 50), section 30(6), the Teaching and Higher Education Act 1998 (c. 30), section 27, the Special Educational Needs and Disability Act 2001 (c. 10) sections 34(1) and 24(6) and Schedule 9 and the Integration of Functions Order, Schedule 2, paragraph 5(1).

(11) 2005 asp 6.

(12) 1998 c.30. Section 22 was amended by the Learning and Skills Act 2000 (c.21), section 146(2)(a) and Schedule 11, paragraph 1; the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6(2), paragraph 236; the Finance Act 2003 (c.14), section 147(3); the Higher Education Act 2004 (c.8), sections 42(1) and 43(2) and Schedule 7, paragraph 1, the Apprenticeship, Skills, Children and Learning Act 2009 (c.22), section 257(2) and the Education Act 2011 (c.21), section 76.

(13) 1989 c.41.

(14) 1995 c.36.

(15) 1996 c.56. Section 320 was amended by the Integration of Functions Order, Schedule 2, paragraph 7(2).

(16) 2004 asp 4.