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STATUTORY INSTRUMENTS

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**2013 No. 377**

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

**PART 1**

**General**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Social Security (Personal Independence Payment) Regulations 2013.

(2) These Regulations come into force in relation to a particular case on the day on which Part 4 of the Act comes into force in relation to that case<sup>(1)</sup>.

**Interpretation**

**2.** In these Regulations —

“the 1998 Act” means the Social Security Act 1998<sup>(2)</sup>;

“the Act” means the Welfare Reform Act 2012;

“aid or appliance”-

(a) means any device which improves, provides or replaces C’s impaired physical or mental function; and

(b) includes a prosthesis;

“assessment” means the assessment referred to in regulation 4;

“C” means a person who has made a claim for or, as the case may be, is entitled to personal independence payment;

“component” means the daily living component or, as the case may be, the mobility component of personal independence payment;

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1;

“disability living allowance” means disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“prescribed date” means the date prescribed<sup>(4)</sup> by regulation 14 or 15;

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(1) See S.I. 2013/358 (C.16).

(2) 1998 c.14.

(3) 1992 c.4. Section 71 was amended by the Welfare Reform and Pensions Act 1999 (c.30), section 67(1).

(4) ‘Prescribed’ means prescribed by regulations. See section 95 of the Act.

“previous award” means an award of either or both components to which C has ceased to be entitled;

“revised” means revised under section 9 of the 1998 Act, and “revision” is to be construed accordingly;

“superseded” means superseded under section 10 of the 1998 Act<sup>(5)</sup>, and “supersession” is to be construed accordingly; and

terms defined for the purposes of a provision of Part 4 of the Act have the same meaning in these Regulations.

## PART 2

### Personal independence payment assessment

#### Daily living activities and mobility activities

3.—(1) For the purposes of section 78(4) of the Act and these Regulations, daily living activities are the activities set out in column 1 of the table in Part 2 of Schedule 1.

(2) For the purposes of section 79(4) of the Act and these Regulations, mobility activities are the activities set out in column 1 of the table in Part 3 of Schedule 1.

#### Assessment of ability to carry out activities

4.—(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the Act, whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment.

(2) C’s ability to carry out an activity is to be assessed –

- (a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or
- (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

#### Scoring for daily living activities

5.—(1) The score C obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has —

- (a) limited ability to carry out daily living activities where C obtains a score of at least 8 points in relation to daily living activities; and

(5) Section 10 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 7, paragraph 23(a) and (b) and Schedule 10, and the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), Schedule 3, paragraph 148.

- (b) severely limited ability to carry out daily living activities where C obtains a score of at least 12 points in relation to daily living activities.

### **Scoring for mobility activities**

6.—(1) The score C obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).

(2) For the purpose of paragraph (1), the number of points awarded to C for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to C under regulation 7.

(3) Where C has undergone an assessment, C has —

- (a) limited ability to carry out mobility activities where C obtains a score of at least 8 points in relation to mobility activities; and
- (b) severely limited ability to carry out mobility activities where C obtains a score of at least 12 points in relation to mobility activities.

### **Scoring: further provision**

7.—(1) The descriptor which applies to C in relation to each activity in the tables referred to in regulations 5 and 6 is —

- (a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;
- (b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and
- (c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period—
  - (i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period; or,
  - (ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if it is likely that, if C had been assessed on that day, C would have satisfied that descriptor.

(3) In paragraphs (1) and (2), “required period” means —

- (a) in the case where entitlement to personal independence payment falls to be determined, the period of 3 months ending with the prescribed date together with—
  - (i) in relation to a claim after an interval for the purpose of regulation 15, the period of 9 months beginning with the date on which that claim is made;
  - (ii) in relation to any other claim, the period of 9 months beginning with the day after the prescribed date.
- (b) in the case where personal independence payment has been awarded to C -
  - (i) during the period of 3 months following a determination of entitlement under a claim for the purpose of regulation 15, the period of 3 months ending with the prescribed date together with, for each day of the award, the period of 9 months beginning with the day after that date;

- (ii) in any other case, for each day of the award, the period of 3 months ending with that date together with the period of 9 months beginning with the day after that date.

**Information or evidence required for determining limited or severely limited ability to carry out activities**

**8.—(1)** The Secretary of State may require C to provide any information or evidence required to determine whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities.

(2) Where information or evidence is requested under paragraph (1), C must provide the information or evidence to the Secretary of State within one month from the date of the request being made or within such longer period as the Secretary of State may consider reasonable in the circumstances of the particular case.

(3) Where C fails without good reason to comply with the request referred to in paragraph (1), a negative determination in relation to the component to which the failure related must be made.

**Claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities**

**9.—(1)** Where it falls to be determined whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities, C may be required to do either or both of the following —

- (a) attend for and participate in a consultation in person;
- (b) participate in a consultation by telephone.

(2) Subject to paragraph (3), where C fails without good reason to attend for or participate in a consultation referred to in paragraph (1), a negative determination must be made.

(3) Paragraph (2) does not apply unless —

- (a) written notice of the date, time and, where applicable, place for, the consultation is sent to C at least 7 days in advance; or
- (b) C agrees, whether in writing or otherwise, to accept a shorter period of notice of those matters.

(4) In paragraph (3), reference to written notice includes notice sent by electronic communication where C has agreed to accept correspondence in that way and ‘electronic communication’ has the meaning given in section 15(1) of the Electronic Communications Act 2000<sup>(6)</sup>.

(5) In this regulation, a reference to consultation is to a consultation with a person approved by the Secretary of State.

**Matters to be taken into account in determining good reason in relation to regulations 8 and 9**

**10.** The matters to be taken into account in determining whether C has good reason under regulation 8(3) or 9(2) include —

- (a) C’s state of health at the relevant time; and
- (b) the nature of any disability that C has.

<sup>(6)</sup> 2000 (c.7). Section 15(1) was amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 158.

### **Re-determination of ability to carry out activities**

11. Where it has been determined that C has limited ability or severely limited ability to carry out either or both daily living activities or mobility activities, the Secretary of State may, for any reason and at any time, determine afresh in accordance with regulation 4 whether C continues to have such limited ability or severely limited ability.

## **PART 3**

### **Required period condition**

#### **Required period condition: daily living component**

12.—(1) C meets the required period condition for the purposes of section 78(1) of the Act (daily living component at standard rate) where —

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had limited ability to carry out daily living activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had limited ability to carry out daily living activities.

(2) C meets the required period condition for the purposes of section 78(2) of the Act (daily living component at enhanced rate) where —

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had severely limited ability to carry out daily living activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had severely limited ability to carry out daily living activities.

#### **Required period condition: mobility component**

13.—(1) C meets the required period condition for the purposes of section 79(1) of the Act (mobility component at standard rate) where —

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had limited ability to carry out mobility activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had limited ability to carry out mobility activities.

(2) C meets the required period condition for the purposes of section 79(2) of the Act (mobility component at enhanced rate) where —

- (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had severely limited ability to carry out mobility activities; and
- (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had severely limited ability to carry out mobility activities.

**The prescribed date**

14. Except where paragraph (2) or (3) of regulation 15 applies, the prescribed date is—
- (a) where C has made a claim for personal independence payment which has not been determined, the date of that claim or, if later, the earliest date in relation to which, if C had been assessed in relation to C's ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 3 months, it is likely that the Secretary of State would have determined at that time that C had limited ability or, as the case may be, severely limited ability to carry out those activities; and
  - (b) where C has an award of either or both components, each day of that award.

**The prescribed date: claims for personal independence payment after an interval**

- 15.—(1) Paragraphs (2) and (3) apply where —
- (a) C makes a claim for personal independence payment (“the new claim”);
  - (b) C had a previous award which ended not more than 2 years before the date on which the new claim is made;
  - (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which C is entitled (or would be entitled if C met the required period condition) under the new claim; and
  - (d) the Secretary of State determines that the entitlement under the new claim results from—
    - (i) substantially the same physical or mental condition or conditions for which the previous award was made; or
    - (ii) a new physical or mental condition which developed as a result of a condition for which the previous award was made.
- (2) In relation to determination of entitlement under the new claim —
- (a) the prescribed date for the purposes of regulations 12(1)(a) and (2)(a) and 13(1)(a) and (2)(a) is the date on which the previous award ended; and
  - (b) regulations 12(1)(b) and (2)(b) and 13(1)(b) and (2)(b) have effect in relation to the new claim as if, for the words ‘the prescribed date’ there were substituted ‘the date on which the new claim for personal independence payment is made’.
- (3) Where C is awarded either or both components under the new claim, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 3 months following the date of the new claim —
- (a) the prescribed date for the purposes of regulations 12(1)(a) and (2)(a) and 13(1)(a) and (2)(a) is the date on which the previous award ended; and
  - (b) regulations 12(1)(b) and (2)(b) and 13(1)(b) and (2)(b) have effect in relation to that award as if, for the words ‘the prescribed date’ there were substituted ‘each day of the award’.
- (4) This regulation is subject to regulation 26.

## PART 4

### Residence and presence conditions

#### Conditions relating to residence and presence in Great Britain

16. Subject to the following provisions of this Part, the prescribed conditions for the purposes of section 77(3) of the Act as to residence and presence in Great Britain are that on any day for which C claims personal independence payment C —

- (a) is present in Great Britain;
- (b) has been present in Great Britain for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day;
- (c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and
- (d) is a person —
  - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(7); or
  - (ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(8), section 115 of that Act does not apply for the purpose of personal independence payment.

#### Absence from Great Britain

17.—(1) Where C is temporarily absent from Great Britain, C is treated as present in Great Britain for the purposes of regulation 16(a) and (b) for the first 13 weeks of absence.

(2) C is temporarily absent if, at the beginning of the period of absence, C's absence is unlikely to exceed 52 weeks.

#### Absence from Great Britain to receive medical treatment

18.—(1) Where C is temporarily absent from Great Britain, C is treated as present in Great Britain for the purposes of regulation 16(a) and (b) for the first 26 weeks of that absence, where —

- (a) C's absence is solely in connection with arrangements made for the medical treatment of C for a disease or bodily or mental disablement which commenced before C left Great Britain; and
- (b) the arrangements referred to in paragraph (1)(a) relate to medical treatment —
  - (i) outside Great Britain;
  - (ii) during the period whilst C is temporarily absent from Great Britain; and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “temporarily absent” has the same meaning as in regulation 17(2).

#### Absence from Great Britain in special cases

19.—(1) Where C is absent from Great Britain, C is treated as present in Great Britain for the purposes of regulation 16(a) and (b), where —

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(7) 1999 c.33. Section 115 was amended by the Act, Schedule 9, paragraph 44. There are other amendments not relevant to these Regulations.

(8) Regulation 2 was amended by S.I. 2013/388. There are other amendments not relevant to these Regulations.

- (a) C is abroad in the capacity of –
  - (i) a member of Her Majesty’s forces;
  - (ii) an aircraft worker; or
  - (iii) a mariner; or
- (b) C is in employment prescribed for the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992<sup>(9)</sup> in connection with continental shelf operations; or
- (c) C is living with a person mentioned in paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

(2) In this regulation and in regulation 20, “a member of Her Majesty’s forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006<sup>(10)</sup>, other than a person who is specified in Schedule 2, who is –

- (a) over the age of 16; and
- (b) not absent on desertion.

(3) In this regulation —

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where –

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where –

- (a) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces.

### **Serving members of Her Majesty’s forces and their family members – further provision**

**20.** C is treated as habitually resident in Great Britain for the purposes of regulation 16(c) where —

- (a) C is resident outside Great Britain in the capacity of a member of Her Majesty’s forces; or
- (b) C is living with a person mentioned in paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

<sup>(9)</sup> 1992 c.4. Section 120(2) was amended by the Social Security Act 1998, section 86(1) and Schedule 7, paragraph 70, the Petroleum Act 1998 (c.17), Schedule 4, paragraph 30 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 26 and Schedule 7, paragraph 8.

<sup>(10)</sup> 2006 c.52. There are amendments to section 374 not relevant to these Regulations.



### **Terminal illness**

21. Where C is terminally ill and makes a claim for personal independence payment expressly on that ground, regulation 16 applies as if paragraph (b) were omitted.

### **Persons residing in Great Britain to whom a relevant EU Regulation applies**

22. Regulation 16(b) does not apply in relation to a claim for personal independence payment where on any day –

- (a) C is habitually resident in Great Britain;
- (b) a relevant EU Regulation<sup>(11)</sup> applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

### **Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies**

23. Regulation 16(a) to (c) does not apply in relation to entitlement to the daily living component of personal independence payment where on any day —

- (a) C is habitually resident in –
  - (i) an EEA state other than the United Kingdom; or
  - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) C can demonstrate a genuine and sufficient link to the United Kingdom social security system.

## **PART 5**

### **Rate of personal independence payment**

#### **Rate of personal independence payment**

24.—(1) The prescribed weekly rates of the daily living component for the purposes of section 78(3) of the Act are —

- (a) the standard rate, £53.00; and
- (b) the enhanced rate, £79.15.

(2) The prescribed weekly rates of the mobility component for the purposes of section 79(3) of the Act are—

- (a) the standard rate, £21.00; and
- (b) the enhanced rate, £55.25.

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(11) See section 84(2) of the Act for the meaning of ‘relevant EU Regulation’.

## PART 6

### Provisions relating to age

#### **Exceptions to section 83 where entitlement exists or claim made before relevant age**

**25.** Section 83(1) of the Act (persons of pensionable age) does not apply where C has reached the relevant age if C —

- (a) was entitled to an award of either or both components on the day preceding the day on which C reached the relevant age; or
- (b) made a claim for personal independence payment before reaching the relevant age and that claim was not determined before C reached that age but an award of either or both components would be made in respect of C but for section 83(1) of the Act.

#### **Claim for personal independence payment after an interval and after reaching the relevant age**

**26.—(1)** Where C has reached the relevant age and makes a new claim in the circumstances set out in regulation 15 the following exceptions apply.

- (2) The exceptions referred to in paragraph (1) are —
  - (a) section 83(1) of the Act (persons of pensionable age) does not apply;
  - (b) the reference to ‘2 years’ in regulation 15(1)(b) is to be read as ‘1 year’;
  - (c) where C is assessed as having severely limited ability to carry out mobility activities for the purposes of the new claim —
    - (i) C is entitled to the enhanced rate of the mobility component only if C was entitled to that rate of that component under the previous award; and
    - (ii) where C is not entitled to the enhanced rate of that component because of paragraph (i), C is entitled to the standard rate of that component provided that C was entitled to that rate of that component under the previous award; and
  - (d) where C is assessed as having limited ability to carry out mobility activities for the purposes of the new claim, C is entitled to the standard rate of the mobility component only if C was entitled to that component, at either rate, under the previous award.

#### **Revision and supersession of an award after the person has reached the relevant age**

**27.—(1)** Subject to paragraph (2), section 83(1) of the Act (persons of pensionable age) does not apply where —

- (a) C has reached the relevant age and is entitled to an award (“the original award”) of either or both components pursuant to an exception in regulation 25 or 26; and
- (b) that award falls to be revised or superseded.

(2) Where the original award includes an award of the mobility component and is superseded for a relevant change of circumstance which occurred after C reached the relevant age, the restrictions in paragraph (3) apply in relation to the supersession.

- (3) The restrictions referred to in paragraph (2) are —
  - (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Secretary of State
    - (i) may only make an award for the standard rate of that component; and

- (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
- (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but C had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the supersession takes or would take effect.

## 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(**12**) (Local Authority Services);
  - (b) sections 59 and 59A of the Social Work (Scotland) Act 1968(**13**) (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(**14**);
  - (d) the Community Care and Health (Scotland) Act 2002(**15**);
  - (e) the Mental Health (Care and Treatment) (Scotland) Act 2003(**16**); 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(**17**) (grants in aid of educational services or research);

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(12) 1948 c.29.

(13) 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.

(14) 1983 c.20.

(15) 2002 asp 5.

(16) 2003 asp 13.

(17) 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).

- (ii) section 14 of the Education Act 2002(**18**) (power of Secretary of State or National Assembly for Wales to give financial assistance for purposes related to education or children etc.);
  - (iii) section 49 of the Education (Scotland) Act 1980(**19**) (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)(**20**);
  - (iv) section 65 of the Further and Higher Education Act 1992(**21**) (administration of funds by councils);
  - (v) section 4 of the Further and Higher Education (Scotland) Act 2005(**22**) (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(**23**) (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(**24**) (provision of services for children in need: impaired health and development) or section 93(4)(a)(ii) of the Children (Scotland) Act 1995(**25**) (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(**26**) (provision outside England and Wales for certain children) or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004(**27**) (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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- (18) 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.
  - (19) 1980 c.44. Section 49 was amended by the Self-Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(9).
  - (20) 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).
  - (21) 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).
  - (22) 2005 asp 6.
  - (23) 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.
  - (24) 1989 c.41.
  - (25) 1995 c.36.
  - (26) 1996 c.56. Section 320 was amended by the Integration of Functions Order, Schedule 2, paragraph 7(2).
  - (27) 2004 asp 4.

### **Hospital in-patients**

**29.**—(1) Subject to regulation 30, no amount of personal independence payment which is attributable to either component is payable in respect of C for any period during which C meets the condition in section 86(2) of the Act (in-patient treatment: costs of treatment, accommodation and related services borne out of public funds).

(2) For the purposes of section 86(3) of the Act, the costs of treatment, accommodation or any related services are borne out of public funds if C 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(**28**);
  - (ii) the National Health Service (Wales) Act 2006(**29**); or
  - (iii) the National Health Service (Scotland) Act 1978(**30**); or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

### **Payability exceptions: care homes and hospitals**

**30.**—(1) Subject to the following paragraphs, regulation 28(1) or, as the case may be, regulation 29(1) does not apply to C in respect of the first 28 days of any period during which C is someone to whom that regulation applies.

(2) Where, on the day on which C’s entitlement to personal independence payment commences, 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) or section 86(2) of the Act (in-patient treatment: costs of treatment, accommodation and related services borne out of public funds), paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to satisfy that condition.

(3) Regulation 28 or, as the case may be, regulation 29 does not apply where C is residing in a hospice and is terminally ill, and the Secretary of State has been informed that C is terminally ill—

- (a) on a claim for personal independence payment;
- (b) on an application for a revision or a supersession of an award of personal independence payment; or
- (c) in writing in connection with an award of, or a claim for, or an application for a revision or a supersession of an award of, personal independence payment.

(4) In paragraph (3), “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 in England (within the meaning of section 275(**31**) of the National Health Service Act 2006);
- (b) a hospital in Wales vested in –
  - (i) an NHS trust;
  - (ii) a Local Health Board; or
  - (iii) the Welsh Ministers,

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(28) 2006 c.41.

(29) 2006 c.42.

(30) 1978 c.29.

(31) Section 275 was amended by the Health and Social Care Act 2012 (c.7), Schedule 4, paragraph 138(1) and (2). There are other amendments not relevant to these Regulations.

- for the purpose of functions under the National Health Service (Wales) Act 2006<sup>(32)</sup>;
- (c) a health service hospital in Scotland (within the meaning of section 108(1)<sup>(33)</sup> of the National Health Service (Scotland) Act 1978);
- (d) a hospital maintained by the Defence Council; or
- (e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.
- (5) Regulation 28(1) does not apply to a case where, during any period the total cost of the qualifying services<sup>(34)</sup> are met —
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person’s own resources and partly with assistance from another person or a charity<sup>(35)</sup>; or
- (b) on that person’s behalf by another person or a charity.
- (6) 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.
- (7) In the application of these Regulations to Scotland, “charity” is to be construed as if these Regulations were an enactment to which section 7 of the Charities Act 2011<sup>(36)</sup> (application in relation to Scotland) applied.

### **Prisoners and detainees**

**31.**—(1) Subject to paragraph (2), section 87 of the Act (prisoners and detainees) does not apply in respect of the first 28 days of any period during which C is a person to whom that section would otherwise apply.

(2) Where, on the day on which C’s entitlement to personal independence payment commences, C is a person to whom that section applies, paragraph (1) does not apply to C in respect of any period of consecutive days, beginning with that day, on which C continues to be a person to whom that section applies.

(3) Section 87 of the Act does not apply to C in respect of any period after the conclusion of criminal proceedings as a result of which C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the conditions set out in paragraph (4).

(4) The conditions referred to in paragraph (3) are —

(a) C is -

- (i) detained under section 45A of the Mental Health Act 1983<sup>(37)</sup> (power of higher courts to direct hospital admission) or section 47<sup>(38)</sup> of that Act (removal to hospital of persons serving sentences of imprisonment, etc); and

<sup>(32)</sup> 2006 c. 42.

<sup>(33)</sup> Section 108 was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 6(a) and the National Health Service and Community Care Act 1990 (c. 16), Schedule 9, paragraph 19(2)(b). There are other amendments not relevant to these Regulations.

<sup>(34)</sup> See section 85(4) of the Act for the meaning of ‘qualifying services’.

<sup>(35)</sup> See section 1(1) of the Charities Act 2011 (c. 25) for the meaning of ‘charity’ in England and Wales.

<sup>(36)</sup> 2011 c. 25.

<sup>(37)</sup> 1983 c.20. Section 45A was inserted by the Crime (Sentences) Act 1997 (c.43), section 46 and amended by the Criminal Justice Act 2003 (c.44), Schedule 32, paragraphs 37 to 39 and Schedule 37, Part 7 and by the Mental Health Act 2007 (c.12), sections 4(1) and (6) and 10(1) and (8) and Schedule 1, paragraphs 1 and 9 and Schedule 11, Part 1.

- (ii) being detained on or before the day which the Secretary of State has certified to be C's release date within the meaning of section 50(3) of that Act<sup>(39)</sup>; or
- (b) C is being detained under-
  - (i) section 59A of the Criminal Procedure (Scotland) Act 1995<sup>(40)</sup> (hospital direction); or
  - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(41)</sup> (transfer of prisoners for treatment of mental disorder).
- (5) For the purposes of this regulation —
  - (a) “hospital or similar institution” means any place (not being a prison, a detention centre, a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
  - (b) criminal proceedings against any person are deemed to be concluded upon that person being found insane in those proceedings with the effect that that person cannot be tried or the trial of that person cannot proceed.
- (6) Section 87 of the Act does not apply to C where —
  - (a) C is undergoing imprisonment or detention in legal custody outside Great Britain; and
  - (b) in similar circumstances in Great Britain, C would have been excepted from the application of that section by virtue of the operation of any provision of this regulation.

### Periods of residence

- 32.**—(1) In these Regulations, a “period of residence” is a period during which C –
- (a) meets the condition in section 85(2) of the Act (care home residents);
  - (b) meets the condition in section 86(2) of the Act (hospital in-patients); or
  - (c) is a person who is undergoing imprisonment or detention in legal custody.
- (2) Subject to paragraph (3), for the purposes of section 87 of the Act and regulations 28 and 29, a period of residence —
- (a) begins on the day after the day on which C enters a care home, hospital or similar institution or commences a period of imprisonment or detention in legal custody; and
  - (b) ends on the day before the day on which C leaves a care home, hospital or similar institution or on which a period of imprisonment or detention in legal custody ends.
- (3) Where, immediately following a period of residence for the purpose of sub-paragraph (a), (b) or (c) of paragraph (1), C commences another period of residence for the purpose of any of those sub-paragraphs, the earlier period of residence is deemed to end on the day on which C leaves the care home, hospital or similar institution or, as the case may be, on which the period of imprisonment or detention ends.
- (4) Subject to paragraph (5), for the purposes of regulation 30(1) and 31(1), —
- (a) two or more distinct periods of residence separated by an interval not exceeding 28 days, or by two or more such intervals, are to be treated as a continuous period equal in duration

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<sup>(38)</sup> Section 47 was amended by the Crime (Sentences) Act 1997, section 56(2) and Schedule 6; the Domestic Violence, Crime and Victims Act 2004 (c.28), Schedule 10, paragraph 18; the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 97(1) and (2)(a) and the Mental Health Act 2007, section 4(7) and Schedule 1, paragraphs 1 and 10 and Schedule 11, Part 1.

<sup>(39)</sup> Section 50(3) was substituted by the Criminal Justice Act 2003, section 294(3).

<sup>(40)</sup> 1995 c.46, section 59A was substituted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Schedule 4, paragraph 8(6).

<sup>(41)</sup> 2003 asp 13.

to the total duration of such distinct periods and ending on the last day of the later or last such period; and

- (b) any period or periods to which those regulations refer are to be taken into account and aggregated with any other period referred to in those regulations.

(5) Paragraph (4) is, where the periods referred to in sub-paragraph (a) of that paragraph are both or all periods to which section 87 applies, to have effect as if -

- (a) the words 'subject to paragraph (5)' and 'regulation 30(1) and' were omitted;
- (b) the reference to '28 days' in sub-paragraph (a) of that paragraph read 'one year'; and
- (c) the references to 'those regulations' in sub-paragraph (b) read 'that regulation' and the reference to 'refer' read 'refers'.

Signed by authority of the Secretary of State for Work and Pensions.

25th February 2013

*Esther McVey*  
Parliamentary Under-Secretary of State  
Department for Work and Pensions