

Alternative Accommodation

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In this chapter, we cover certain types of alternative accommodation including care homes, hospitals, hospices and legal detention.

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Introduction

1. This chapter is relevant to individuals who are entitled to Scottish Adult Disability Living Allowance (Scottish Adult DLA). It explains how living in a care home¹ or hospital², or being in legal detention³ affects the individual's entitlement to Scottish Adult DLA.

1 Scottish Adult DLA regs, reg. 22

2 Scottish Adult DLA regs, reg. 23

3 Scottish Adult DLA regs, reg. 25

2. An individual entering or leaving alternative accommodation, or a change in how their stay in alternative accommodation is funded, is a change of circumstances.

3. When an individual tells Social Security Scotland about a change of circumstances that would possibly affect their entitlement to Scottish Adult DLA, a case manager must both:

- carry out an unscheduled review of the case

- make a determination without application¹.

1 Scottish Adult DLA regs, reg 43(a)

4. The Unscheduled Reviews and Determinations without Application chapter has more information on:

- changes of circumstance
- unscheduled reviews
- determinations without application.

Definition of care home, hospital and hospice

5. A care home is defined^{1,2} as a service which provides accommodation together with any of the following:

- nursing care
- personal care
- personal support

1 Scottish Adult DLA regs, reg. 2

2 Public Services Reform (Scotland) Act 2010, Schedule 12, para.2

6. The service should be provided to the individual because of their vulnerability and needs. This definition of care home does not include hospitals or hospices.

7. It might not always be clear if the place where the individual is living is a care home. The key to this definition is if the accommodation is linked to the care they receive¹.

1 Scottish Adult DLA regs, reg. 2

8. Situations such as retirement or sheltered housing are similar but are not defined as care homes. The individual may have their tenancy paid for separately to the care or services they receive. Case managers should consider this on an individual basis.

Example: accommodation which is not considered to be a care home

Mary is 78 and has an award of Scottish Adult DLA. She has recently moved into retirement housing. This is sometimes known as sheltered housing. Mary's accommodation has a communal area, a 24-hour emergency alarm system and a warden.

However, Mary does not receive support with her nursing or personal care, meals or help with daily tasks. Mary lives independently in her retirement housing but has the comfort of knowing there is an alarm system during an emergency.

The case manager determines that Mary's accommodation does not meet the definition of a care home. This means that Mary's accommodation is not taken into consideration when making a determination of entitlement to Scottish Adult DLA.

9. A hospital is an institution or establishment for the care of the sick or wounded, or of those who require medical treatment. Any reference to hospital in this chapter can also refer to similar institutions such as:

- rehabilitation centres
- addiction clinics

10. For purposes of Special Rules for Terminal Illness cases only, a hospice is a palliative care institution that isn't publicly funded and whose main function is to provide palliative end of life care for people suffering from a progressive disease at the final stages. A hospice is a separate organisation to a hospital. For more information on how Scottish Adult DLA entitlement is affected by terminal illness, see the Special Rules for Terminal Illness chapter. Where a person is in a hospice but is *not* terminally ill, they are treated as though they are in hospital for the purposes of payment of their Scottish Adult DLA.

1 Scottish Adult DLA regs, reg. 24(2)

11. If an individual is resident or a patient in a care home¹, hospital², or similar institution outside of the common travel area, it could affect their ability to satisfy the ordinary and habitual residence requirements for Scottish Adult DLA. This will depend on their overall circumstances and how long they will remain outside of the common travel area³. An individual can be absent from the common travel area for any reason for up to 13 weeks, or up to 26 weeks where the absence is for medical treatment⁴. The common travel area comprises the UK, the whole of the island of Ireland (including the Republic of Ireland), the Channel Islands and the Isle of Man. For more information about residence and presence, please see the residence and presence chapter.

1 Scottish Adult DLA regs, reg 22

2 Scottish Adult DLA regs, reg 23

3 Scottish Adult DLA regs, reg. 10(d) and (e)

4 Scottish Adult DLA regs, reg 11(1)

12. Case managers should be aware that temporary absence from the common travel area could impact upon an individual's entitlement to Scottish Adult DLA. They will have to consider the potential impact in all cases involving time periods spent in a care home, hospital or similar institution outside of the common travel area. For more information on this and temporary absences from the common travel area, see the Residence and Presence chapter.

Meaning of legal detention

1. To determine entitlement to payment of Scottish Adult DLA, legal detention refers to any detention in legal custody, in Scotland or in the rest of the UK, within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995.¹

1 Scottish Adult DLA regs, reg. 2

2. An adult in Scotland can be legally detained if they are either:

- detained in legal custody awaiting trial
- sentenced to imprisonment because of court proceedings.

This list is not exhaustive.

3. Detention in legal custody typically happens before or during legal proceedings. An individual can be taken into legal custody when:

- they are charged with a serious offence such as murder, rape or terrorism
- an individual has a history of offending
- there is the risk of the individual posing a danger to witnesses.

This list is not exhaustive.

4. A custodial sentence may be given to an individual who is convicted of an offence.

5. For the purposes of determining entitlement to Scottish Adult DLA, legal detention does not include any day in which an individual is an in-patient in a hospital or in a hospice¹. The relevant rules for these situations can be found in this DMG chapter, in the sections on the effect of time spent in care homes and hospitals.

1 Scottish Adult DLA regs, reg.25(2)

6. Case managers should seek advice from their line manager if they are unsure whether an individual is in legal detention for the purpose of determining entitlement to payment of Scottish Adult DLA.

Example: an individual transfers from hospital to legal detention within 28 days

Tony has a significant mental health condition and is entitled to Scottish Adult DLA. He is convicted of an offence and a custodial sentence was imposed, which means he is subject to legal detention rules. Before entering legal detention, Tony went straight to hospital to have treatment for his mental health condition. Tony will be transferred to legal detention when his treatment is completed.

Tony receives payment of Scottish Adult DLA for the first 22 days while he is in hospital. On day 23, he is transferred to legal detention. Usually, days that Tony spent in hospital are not to be counted as days he spends in legal detention¹. However, when transferring between one type of alternative accommodation and another, days in the first type of accommodation count as days in the second, including the day he is transferred². This means Tony is treated as though he has already spent 23 days in legal detention. He can receive Scottish Adult DLA for a further 5 days in legal detention, and then from the 29th day, he will be paid £nil but will remain entitled to Scottish Adult DLA.

1 Scottish Adult DLA regs, reg. 25(2)

2 Scottish Adult DLA regs, reg. 26(5)

Legal detention locations

13. It is possible to be legally detained:

- In a prison or detention centre
- In a hospital or similar institution
- Abroad

This list is not exhaustive.

Being legally detained abroad

14. This refers to any legal detention which takes place outside of the United Kingdom.

15. Individuals who are legally detained abroad are subject to the same rules discussed above. In these circumstances, an individual's payment of Scottish Adult DLA would be set at £nil after 28 days.

16. Being in Legal Detention abroad does not affect an individual satisfying the ordinary and habitual residence requirements for Scottish Adult DLA. However it could impact them being present in the common travel area depending on how long they will remain in legal detention, and so impact upon their entitlement to Scottish Adult DLA.¹

1 Scottish Adult DLA regs, reg. 10(1)(d)

17. Entitlement to Scottish Adult DLA stops after 13 weeks as a result of the individual being temporarily absent from the UK. This is because they are treated as being present in the UK for the first 13 weeks of a temporary absence¹. For more information on temporary absence from the UK, see the Residence and Presence chapter.

1 Scottish Adult DLA regs, reg. 11(1)(a)

Example: an individual who is legally detained abroad for 60 days

Abigail is entitled to Scottish Adult DLA. She enters legal detention on 1 June for 60 days while visiting Denmark. Abigail's payments of Scottish Adult DLA are reduced to £nil on 29 June after she spends 28 days in legal detention. She is released from legal detention on 31 July and returns to Scotland 2 days later. Abigail was not absent from the UK for more than 13 weeks and is still entitled to Scottish Adult DLA.

Example: an individual who is legally detained abroad for 160 days

Jacob is entitled to Scottish Adult DLA. He is legally detained for 160 days on 1 March while visiting the United States. Jacob's payments of Scottish Adult DLA are reduced to £nil on 29 March as he has spent 28 days in legal detention. Jacob is released on 8 August and returns to Scotland 3 days later. Jacob is no longer

entitled to Scottish Adult DLA after 13 weeks spent in the United States. This is because Jacob is now considered to be absent from the UK.

Legal detention – moves between Scotland and elsewhere in the UK

18. If someone is sent from another part of the UK to legal detention in Scotland, or is sent from Scotland to legal detention in another part of the UK, please see the chapter on 'Moving from Scotland to another part of the UK and vice versa' for information on how the residence rules apply.

Effect on entitlement of an individual in receipt of Scottish Adult DLA spending time in alternative accommodation

19. An individual who is already in receipt of Scottish Adult DLA is entitled to still be paid it for the first 28 days of their stay in a care home, hospital or legal detention. This is to ensure the change to payments comes into effect for longer or repeated periods in alternative accommodation.

20. There is no impact to the client for shorter periods of less than 28 days, if they do not link to other periods of alternative accommodation. The 28 day period may comprise of one or more separate periods, providing there are no more than 28 days between the periods for hospital and care home stays¹, or one year between the periods where the periods are in legal detention². For more information on this please see the section on linked periods.

1 Scottish Adult DLA regs, reg. 22(3) and 23(3)

2 Scottish Adult DLA regs, reg. 25(4)

21. The non-payment of Scottish Adult DLA enables an individual's entitlement to Scottish Adult DLA to continue while they are resident in alternative accommodation.

22. This is because Scottish Adult DLA helps to meet the extra costs experienced by individuals with a disability or long-term health condition.

23. In most cases when they are in alternative accommodation, the costs of their care will be paid for by the local authority or other public funds. Non-payment of Scottish Adult DLA ensures that a person does not receive support for the costs of their care twice. However, there are exceptions to these rules when an individual entirely self-funds their placement in a care home or hospital. Case managers should refer to the 'exceptions' section of this chapter to understand the exceptions.

24. The individual stops being paid the care component of Scottish Adult DLA on the 29th day of their time spent in a care home¹. For more information on calculating a length of stay in alternative accommodation, reference should be made to the 'Calculating the Length of Stay' section .

1 Scottish Adult DLA regs, reg. 22(2)

25. For payment of care component to stop when in a care home, it must also be the case that the cost of any qualifying services are publicly funded (whether in whole or in part)¹. If the full costs are paid by an individual or a charity (or a combination of both), payment of care component can continue as long as the person is eligible.

1 Scottish Adult DLA regs, reg.22(4)

26. On the 29th day of a period in hospital¹, or in legal detention², an individual stops being paid both components of Scottish Adult DLA. For more information on calculating a length of stay in alternative accommodation, reference should be made to the 'Calculating the Length of Stay' section

1 Scottish Adult DLA regs, reg. 23(2)

2 Scottish Adult DLA regs, reg. 25(3)

27. For payment to stop when in hospital, it must also be the case that the individual:

- is undergoing medical or other treatment as an in-patient at a hospital or similar institution
- has any of the costs of the treatment, accommodation and any other related services borne out of public funds¹.

1 Scottish Adult DLA regs, reg 23(1),

28. Borne out of public funds means the cost of treatment, accommodation and any other related service is paid if the individual is undergoing medical or other treatment as an in-patient in:

- a hospital or similar institution under¹:
 - the National Health Service Act 2006
 - the National Health Service (Wales) Act 2006
 - the National Health Service (Scotland) Act 1978
 - the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991
- a hospital or similar institution maintained or administered by the Defence Council.²

The Defence Council is the governing body of the British Armed Forces. The Armed Forces may at times provide medical treatment to some individuals through hospitals or similar institutions, which also uses public funds.

1 Scottish Adult DLA regs, reg. 23(4)(a)

2 Scottish Adult DLA regs, reg.23(4)(b)

29. When an individual enters, or is released from, legal detention, the Scottish Prison Service will inform Social Security Scotland. For more information on this process please follow operational guidance: Change of circumstance reported by a third party representative.

30. An individual stops being paid both components of Scottish Adult DLA on the 29th day in legal detention. For more information on calculating a length of stay in alternative accommodation, reference should be made to the 'Calculating the Length of Stay' section

31. A review will need to be carried out at the earliest opportunity if the scheduled review date passes while the individual is in legal detention.

32. An individual entering or leaving legal detention is regarded as a change of circumstances if it will likely lead to a change in entitlement. A case manager must complete a determination without application in these circumstances¹.

1 Scottish Adult DLA regs, reg. 43(a)

33. Individuals may be overpaid Scottish Adult DLA if Social Security Scotland is not notified of a change¹. For more information on what to do if there has been an overpayment, see the Overpayments section of the Rates and Payments chapter.

1 SS Act 2018, s. 56

Example: an individual enters legal detention after legal proceedings

Christine is entitled to Scottish Adult DLA. She is charged with a crime but is not taken into legal custody before or during legal proceedings. This means she is still entitled to be paid Scottish Adult DLA.

Christine is sentenced to prison for 14 months. She is no longer entitled to be paid Scottish Adult DLA after she spends 28 days in prison. Christine remains entitled to Scottish Adult DLA, so when she leaves prison, her payments can re-start.

34. Payment continues after 28 days when the individual is in a hospice, is terminally ill¹ and Social Security Scotland have been informed that the individual is terminally ill.

1 Scottish Adult DLA regs, reg. 24(1)

35. Payment after 28 days in a hospice refers only to a “hospice” as defined in the regulations¹. That is, a palliative care institution that isn’t publicly funded and whose main function is to provide palliative end of life care for people suffering from a progressive disease at the final stages. If an individual is receiving palliative care within a specialised ward or facility in a hospital or care home, the individual is considered to be in a publicly funded hospital or care home. This means that their care component will be £nil rated on the 29th day in a care home, or both components will be £nil rated on the 29th day in hospital. These rules also apply for individuals who are not terminally ill and are resident within a hospital or care home where a palliative care unit has been established.

1 Scottish Adult DLA regs, reg.24(2)

36. The exceptions to these rules in this section are discussed in the **Exceptions section**.

37. The individual who is receiving Scottish Adult DLA has a legal duty to inform Social Security Scotland about entering and leaving alternative accommodation, or where there has been a change in how their stay in alternative accommodation is funded¹. The case manager will then make a determination without application.

1 SS (Scotland) Act 2018, s.56

38. They must tell Social Security Scotland about time spent in alternative accommodation as soon as is reasonably practicable. For example, it would be unreasonable for the individual or their representative not to inform Social Security Scotland that they have entered alternative accommodation after a month of being resident. Reference should be made to the Change of Circumstances chapter for more information on what might be considered a good reason for not notifying Social Security Scotland as soon as is reasonably practicable.

39. An individual might not inform the case manager immediately after they have entered alternative accommodation. This might result in the case manager making a determination without application after the individual has spent 28 days in alternative accommodation. In this case, the individual would accrue an overpayment before their payment of Scottish Adult DLA would be set to nil. This would happen in instances where the individual failed to notify the change as soon as was reasonably practicable. For more information on when an individual should notify Social Security Scotland of a change of circumstances, please see the change of circumstances chapter.

Calculating the length of stay

40. The days on which the individual arrives at and then goes home from alternative accommodation do not count¹ in calculating the length of stay.

1 Scottish Adult DLA regs, reg. 26(2)

Example: Calculating the length of stay in a care home

Tam arrives at a care home on 3 August and leaves on the 1 September. The days he arrived and left do not count, so Tam's length of stay in the care home is 28 days. Tam's payment of Scottish Adult DLA is not affected because this does not exceed 28 days.

41. If an individual enters a care home or hospital from another care home, hospital or from legal detention, the day they enter that second care home or hospital is counted as part of the length of stay¹.

1 Scottish Adult DLA regs, reg. 26(5)

Example: Calculating the length of stay when transferring from a hospital to a care home

Diane has an ongoing award of Scottish Adult DLA and is admitted to a hospital on 27 May. On 2 June, she transfers from a hospital to a care home. She leaves the care home on 2 July. The day she transferred to the care home from the hospital count when calculating the relevant period but the days she went into hospital and left the care home do not count. The period of time she spends in alternative accommodation is therefore 35 days. As this exceeds 28 days, Diane cannot receive her award of Scottish Adult DLA for the final 6 days of her stay.

Temporary periods of leave during a stay in alternative accommodation

42. Individuals are entitled to receive payment of Scottish Adult DLA during any period that they temporarily go on leave from alternative accommodation¹. This time is called the period of leave. However, the individual must inform Social Security Scotland of the leave.

1 Scottish Adult DLA regs, reg. 26(4)

43. The period of leave includes the days when the person left and returned to the alternative accommodation.¹

1 Scottish Adult DLA regs, reg. 26(3)

44. The case manager has to make a determination without application for any moves in and out of alternative accommodation that affects the amount paid to the individual.

Example: Calculating leave periods

Loraine has been residing in a care home for 4 months and is entitled to Scottish Adult DLA care and mobility components. Her mobility component is unaffected by the stay in a care home. She received Scottish Adult DLA care component for the first 28 days of her stay. Loraine leaves the care home to return home on 18 July. She returns to the care home on 1 August. This means Loraine is entitled to receive payment of Scottish Adult DLA from 18 July until 1 August. She therefore receives payment for 15 days.

Linked Periods in care homes and hospitals

45. When calculating the length of stay in care homes and hospitals, individual periods shorter than 28 days can be added together to form one 28 day period. However only periods with fewer than 28 days between them can be linked together in this way¹. For the rules relating to legal detention, please see Linked Periods in Legal Detention section.

1 Scottish Adult DLA regs, reg. 22(3) and 23(3)

46. When an individual takes a temporary period of leave shorter than 28 days, their entitlement to be paid Scottish Adult DLA will stop when they return to a care home or hospital. This is because a temporary period of leave of 28 days or fewer does not break any linked periods.

47. However, if the individual takes a period of leave or is discharged for 29 days or more before returning to a care home or hospital, the two periods are not linked and they will be paid Scottish Adult DLA for the first 28 days of their stay.¹

1 Scottish Adult DLA regs, reg. 22(3) and 23(3)

Example: linked periods that have an effect on payment

Andrew ordinarily lives at home but has periodic stays in respite care, which meets the definition of a care home. His award was transferred to Scottish Adult DLA six months ago.

Andrew entered respite care on 1 April and left 19 April. The day he entered the care home and the day he leaves are not taken into account, so this period of residence is 17 days.

Andrew is at home from 19 April and enters the care home again on 5 May. The day he left and the day he returned to the care home are not counted as days in the care home so the period he was living at home is 17 days.

From 5 May, Andrew resides in the care home until returning home on 18 May. Neither 5 May or 18 May are included in the calculation, so the period Andrew was residing in the care home for is 12 days.

As there are fewer than 28 days between the two periods during which Andrew is in respite care, they are linked to form one 29 day period.

Andrew will therefore receive care component of Scottish Adult DLA for the first 28 days of his stay but will not be paid for day 29.

Example: linked periods that have no effect on payment

Sylvia has been entitled to Scottish Adult DLA for 3 years. They regularly spend short periods of time in hospital and live in their own home with their husband the rest of the time. Over the period of 3 months, Sylvia's routine is:

- residing in hospital: 1 October to 7 October. This period of residence is 5 days.
- living at home: 7 October to 2 November. This period living at home is 27 days.
- residing in hospital: 2 November to 10 November. This period of residence is 7 days.

There are only 27 days between the 5 day period and the 7 day period residing in hospital. These two periods are linked to form one 12 day period. Sylvia is entitled to Scottish Adult DLA for this 12-day period.

Sylvia then stays at home from 10 November to 11 December. As this is more than 28 days the clock is re-set. Therefore, the 12 days of residence in hospital are not taken into consideration in calculating any future length of stay at the hospital. If there are any future stays, Sylvia would be entitled to receive Scottish Adult DLA for 28 days all over again.

Linked periods in legal detention

48. When calculating the length of stay in legal detention, individual periods shorter than 28 days can be added together to form one 28 day period. For legal detention, periods with fewer than **one year** between them can be linked together in this way¹.

1 Scottish Adult DLA regs, reg. 25(4)

Example: linked periods in legal detention

Greg is remanded in custody on 3 June and stays there until his trial on 27 June. He is then released on bail pending his sentencing hearing which takes place on 6 August. He receives a non-custodial sentence and can therefore continue to receive Scottish Adult DLA. However, on 12 December Greg is arrested and remanded in custody again. Greg has already received 23 days' payment of Scottish Adult DLA whilst on remand in June – as there is less than a year between the two periods in detention, they are linked. Greg can therefore receive a further 5 days' payment and his payment will stop from 18 December for as long as he remains in legal detention.

Exceptions

Self-funding placements in a hospital

49. Individuals are entitled to be paid Scottish Adult DLA for the full period they are living in hospital if the full cost of the qualifying services are privately funded¹.

1 Scottish Adult DLA regs, reg. 23(1)(b) and (4)

Self-funding placements in a care home

50. Individuals are entitled to be paid care component of Scottish Adult DLA for the full period they are living in a care home if the full cost of the qualifying services are paid for either:

- entirely by the individual
- partly by the individual and partly by another person such as their child, guardian or a charity. This does not include a local authority in the UK.
- entirely by another person or paid for by a charity, which doesn't include a local authority anywhere in the UK¹.

1 Scottish Adult DLA regs, reg. 22(4)

51. Payment of mobility component can continue as long as the individual is eligible.

Example: Publicly funded personal care while resident in a care home

Free Personal Care is one example of publicly funded care in Scotland. This is available to all adults in Scotland, with eligibility being assessed by the local authority. Therefore, if someone is in receipt of Free Personal Care while residing in a care home, the care home rules in this chapter will apply to their payment of Scottish Adult DLA.

If an individual receives Free Personal Care while residing in their own home, or retirement/sheltered housing, their payment of Scottish Adult DLA will not be impacted.

If an individual is resident in a care home and receives Free Nursing Care only, this will not impact on their payment of Scottish Adult DLA. However, it is unlikely that an individual residing in a care home will receive Free Nursing Care without also receiving Free Personal Care, as eligibility is also assessed by the local authority. More information on Free Personal Care and Nursing Care can be found here: [Free personal and nursing care: questions and answers - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/free-personal-and-nursing-care/questions-and-answers/pages/index.aspx)

Entitlement begins by case transfer whilst residing in a care home or hospital

52. If an individual has been living in a care home for 28 days or more on the day their case is transferred from DLA to Scottish Adult DLA, their entitlement to Scottish Adult DLA can begin but the amount of the care component is reduced to nil until the day they leave alternative accommodation¹. The exceptions listed in the exceptions section apply.

1 Scottish Adult DLA regs, reg. 27(3)(a)

53. If an individual has been in hospital for 28 days or more on the day their case is transferred from DLA to Scottish Adult DLA, their entitlement can begin, but the payment of either component of Scottish Adult DLA won't begin until the day they are discharged from hospital. The exceptions listed in the exceptions section apply¹.

1 Scottish Adult DLA regs, reg. 27(3)(a)(ii)

Example: Case transferred where the person has been in a care home for more than 28 days at the point of transfer.

Morag is 77 and has been in a care home for six months. At the point of transfer, the care component of her DLA award has already been set to £nil because she has been in the accommodation for more than 28 days. After transfer, Morag will retain an underlying entitlement to Scottish Adult DLA, but her payment of the care component will continue to be £nil from the point of transfer, until she leaves the care home. Any mobility component that Morag is entitled to will be unaffected by her care home stay.

Resident in alternative accommodation for less than 28 days on the day entitlement to Scottish Adult DLA begins

54. When the person is in a publicly-funded care home or hospital at the point of transfer, the person's Scottish Adult DLA should be put into payment:

- from the date their Scottish Adult DLA entitlement begins
- for a period of 28 days minus the period spent in the accommodation immediately prior to Scottish Adult DLA entitlement, where DLA was in payment¹.
- On the day after the 28 days is reached, the payment of care component is reduced to nil if the person is in a care home; both components are reduced to nil if the person is in hospital.

1 Scottish Adult DLA regs, reg. 27(4)

Example: Case transferred less than 28 days after the person has entered hospital.

Stan is 69 years old. He went into hospital during the transfer process. Stan had only been in the hospital for fourteen days before the point of case transfer (not counting the day he went into hospital), so his DLA was still in payment. On the date his Scottish Adult DLA entitlement begins, his Scottish Adult DLA must be put into payment for a further 14 days. If, after that time, he is still in hospital, he will be entitled to, but not paid, Scottish Adult DLA until he leaves alternative accommodation.

Entitlement begins by case transfer whilst in legal detention

55. If an individual is in legal detention when their case transfers from DLA to Scottish Adult DLA, their entitlement to Scottish Adult DLA can begin and they will be paid for the first 28 days¹. From day 29, their entitlement will be reduced to nil until they leave legal detention. If they return to legal detention within one year, their payment will be affected as described in the 'Linked periods in legal detention' section. Time spent in detention before their award was transferred does not count.

1 Scottish Adult DLA regs, reg. 27(2)

Entitlement begins because of reinstatement or cross-border move, whilst in alternative accommodation

If an individual is in a care home when their entitlement begins as a result of:

- reinstatement of a previous Scottish Adult DLA award within a year
- request for Scottish Adult DLA after a DLA award has ended
- moving from another part of the UK

payment of the care component will be £0 from the date of entitlement until they leave the accommodation¹.

1 Scottish Adult DLA regs, reg. 27(5) and (6)

If an individual is in a hospital or legal detention when their entitlement begins as a result of:

- reinstatement of a previous Scottish Adult DLA award within a year
- request for Scottish Adult DLA after a DLA award has ended
- moving from another part of the UK

payment of either component will be £0 from the date of entitlement until they leave the accommodation¹.

1 Scottish Adult DLA regs, reg. 27 (5) and (6)

Resident in hospital since 31 July 1995 or earlier

Where an individual has been:

- undergoing medical or other treatment as an in-patient at a hospital or similar institution since on 31 July 1995 or earlier, and

- in continuous receipt of the mobility component of Disability Living Allowance or Scottish Adult Disability Living Allowance

they may receive the mobility component of Scottish Adult Disability Living Allowance at the lower rate until such time as they leave the hospital for more than 28 consecutive days¹.

1 Scottish Adult DLA regs, reg. 27(7)

There are exceptions to this, if after 31 July 1996, the individual is detained under Part II or Part III of the Mental Health Act 1983, Part 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995¹.

1 Scottish Adult DLA regs, reg.27(8)

Types of legal detention

Custodial sentences

56. A custodial sentence is a sentence of imprisonment or detention of an adult offender.

57. The term custodial sentence includes a deferred sentence of imprisonment at the end of criminal proceedings in Scotland. This is also known as a suspended sentence in the rest of the UK.

58. A deferred sentence is when the individual is not in prison but can be sent to prison if they commit another offence during a period of time determined by a judge. This is normally between 3 to 12 months.

59. Individuals who are given a deferred sentence are still entitled to be paid Scottish Adult DLA unless they enter legal detention during this time. If this happens, they will no longer be paid Scottish Adult DLA after they spend 28 days in legal detention.

Example: an individual commits an offence during a deferred sentence and enters legal detention

Gerry is entitled to Scottish Adult DLA care component. A judge rules during legal proceedings that Gerry should be given a deferred sentence of 9 months. Gerry should still be paid Scottish Adult DLA during this time because he is not in legal detention.

Gerry commits a second offence 3 months later and is taken into legal detention. Gerry's payment of Scottish Adult DLA should stop after 28 days in legal detention.

60. When a sentence has been imposed, a higher court can later either:

- quash or cancel the conviction
- substitute the sentence with an order such as a community pay back order or a fine.

61. Payment of Scottish Adult DLA should begin again once the individual is released from legal detention, so long as they still meet the eligibility criteria.

62. An individual cannot receive backdated payment of Scottish Adult DLA for the time they were in legal detention.

Leaving legal detention

63. The date that an individual leaves legal detention is not counted as a day in legal detention¹.

1 Scottish Adult DLA regs, reg26(2)(b)

64. The 28 days of continued entitlement to payment of Scottish Adult DLA can comprise of more than one period. If an individual leaves legal detention but enters again in one year or less, those 2 periods can be linked. This means if an individual is in legal detention for at least 28 days, is released and convicted again within a year, their entitlement to payment would stop on the first day of their second period in legal detention. Time spent in detention before their award was transferred does not count.

1 Scottish Adult DLA regs, reg. 25(4)

Example: an individual whose award of Scottish Adult DLA remains the same after being released from legal detention

Ben is entitled to the middle rate of Scottish Adult DLA care component. He is sentenced and legally detained in prison on 25 April and is no longer paid Scottish Adult DLA after 28 days. This means Ben's payments are set to £nil from 24 May. He is released on 18 July. Social Security Scotland are informed promptly when he enters and is released from legal detention.

When Ben enters prison, the case manager dealing with Ben's case proceeds to carry out an unscheduled review of the case. The case manager then makes a determination without application that Ben remains entitled to Scottish Adult DLA during his legal detention even though payments have been reduced to £nil.

Upon release, payment of Scottish Adult DLA will begin again following a further unscheduled review and determination without application that will be carried out once Social Security Scotland are notified that Ben has been released.

Social Security Scotland confirm that Ben's circumstances remain the same and he is entitled to payment of Scottish Adult DLA again from 18 July.

Release on license

65. Release on license means an individual leaves prison after completing a specified part of their original sentence. All cases of release on license come with conditions and the individual can be returned to prison if they breach these conditions.

66. An individual released on license, including temporary license, is no longer in legal detention. Upon release, payment of Scottish Adult DLA can begin again if the

individual continues to meet the eligibility criteria.

67. Early release schemes include:

- **Parole** is where the prisoner is released on the recommendation of the Parole Board for Scotland after completing a specified part of their original sentence.
- **Home Detention Curfew (HDC)** is commonly referred to as "tagging". A prisoner is released on license before their release date. They must wear an electronic tag as part of their release conditions and remain at home during agreed periods of the day.
- **Supervised Release Order (SRO)** is a period of supervision after a sentence of between 12 months and 4 years where the court determines that there may be a risk to the public.

Example: an individual is subject to a Home Detention Curfew

Finlay is entitled to Scottish Adult DLA. He is taken in to legal detention and is no longer entitled to payment of Scottish Adult DLA after 28 days in legal detention. He is released 8 months later, but must wear an electronic tag and follow a strict curfew as part of the conditions of his release.

Finlay can start to receive payment of Scottish Adult DLA now he is no longer in legal detention. This is because he is no longer imprisoned or held in legal custody. Instead he is monitored by an electronic tag to ensure he is at home when he should be.

Release on temporary license

68. In certain circumstances, individuals in legal detention may be allowed short periods of release on temporary license. The purpose of this is either:

- for compassionate reasons such as terminal illness, bereavement or to support their dependents
- to help the individual improve their chances of resettlement after release.

69. Individuals released on temporary license are not imprisoned or detained in legal custody. This means they can be paid Scottish Adult DLA. Payment of Scottish Adult DLA should resume from the day the individual leaves legal detention. To ensure this happens, the case manager will need to make a determination without application.¹ In calculating an individual's entitlement in these circumstances, the days on which the individual begins the absence from and returns to legal detention are not to be counted as days in legal detention².

1 Scottish Adult DLA regs, reg. 43(a)

2 Scottish Adult DLA regs, reg. 26(3)

Example: an individual who is entitled to Scottish Adult DLA is released from legal detention on temporary license

Lesley is entitled to Scottish Adult DLA care component and is legally detained on 1 March. This means she is no longer entitled to be paid Scottish Adult DLA after she

spends 28 days in legal detention. She is released from legal detention on temporary license on 1 April.

Lesley can start receiving payment of Scottish Adult DLA starting from the day she is released from legal detention because she notified Social Security Scotland within one month of the change of circumstances. Lesley re-enters legal detention on 22 May.

Lesley is no longer paid Scottish Adult DLA. She is then released from legal detention permanently on 30 July. She can once again start receiving payment of Scottish Adult DLA because she notified Social Security Scotland within one month of the change of circumstances.

70. Individuals are expected to notify Social Security Scotland of any change in circumstance within one month of the change first occurring. In some circumstances, an individual may have good reason for not notifying within a month. More information on this can be found in the Change of Circumstances chapter.

Bail

71. Individuals can be released from legal custody on bail before or during legal proceedings. Individuals who are released on bail can be paid Scottish Adult DLA because they are not in legal detention. Individuals who break the conditions of their bail and are legally detained will have payment of Scottish Adult DLA reduced to £nil after 28 days.

Example: an individual who is entitled to Scottish Adult DLA is released from legal detention on bail

Olivia is entitled to Scottish Adult DLA. She is legally detained on 8 April and awaiting legal proceedings. Olivia's payment of Scottish Adult DLA is reduced to £nil after 28 days, from 7 May. Olivia is released on bail 2 months later on 7 July. She can now continue to be paid Scottish Adult DLA because she is no longer legally detained.

Example 2: An individual who is entitled to Scottish Adult DLA breaks their bail conditions

Ali is entitled to Scottish Adult DLA. He committed an offence and has been released on bail pending further legal proceedings. Ali can still be paid Scottish Adult DLA because he is not in legal detention.

Ali breaks his bail conditions and is legally detained on 22 September while he awaits his trial on 1 November. Ali's payment of Scottish Adult DLA is reduced to £nil after he spends 28 days in legal detention. Therefore, Ali's payment is reduced to £nil from 21 October.

Authorised Absence

72. An authorised absence is a period of time when a prisoner is not held in legal detention. An example of this is if a prisoner is released on temporary license to assist with resettlement.

73. Individuals released because of an authorised absence can receive payments of Scottish Adult DLA because they are not in legal detention.

74. An individual's entitlement to Scottish Adult DLA must be considered on each occasion they enter or leave legal detention because of authorised absences. This is because payment of Scottish Adult DLA can be made for a period not spent in legal detention. Payment will not start until the individual has left legal detention and a determination without application has been made.

75. An individual is not treated as though they are in legal detention on any day on which they are an in-patient in a hospital or in a hospice¹. If they have already been in prison for 28 days or more, the period in hospital or a hospice is a continuation of the time period spent in prison. However if they have moved to a hospice and are terminally ill, their payment would recommence and they would be entitled to payment of the highest rate of care component². They would also be entitled to the higher rate mobility component if they were under the relevant age³. If they are over the relevant age, their mobility component cannot change from what it was immediately before the individual reached the relevant age.

1 Scottish Adult DLA regs, reg. 25(2)

2 Scottish Adult DLA regs, reg. 24(1); reg. 20(1)

3 Scottish Adult DLA regs, reg. 20 (2)

76. If an individual enters a care home or hospital temporarily from legal detention, the days they spent in legal detention are to be treated days of residence in the care home or hospital. If the individual has already been in legal detention for 28 days or more, they will not receive payment of Scottish Adult DLA when they enter a care home or hospital¹.

1 Scottish Adult DLA regs, reg. 26(5)(b)(ii)

Example: an individual who is entitled to Scottish Adult DLA transfers from legal detention to a hospital

Bernadette is entitled to the higher rate of Scottish Adult DLA. She entered prison on 28 June. Her payment of Scottish Adult DLA will be reduced to £nil after she spends 28 days in prison. Her payment of Scottish Adult DLA will therefore be reduced to £nil on 26 July.

However on 10 July, Bernadette became unwell and was transferred to a hospital for treatment the same day. She receives treatment in hospital for 2 days.

As Bernadette has only been in prison for 12 days, payment of Scottish Adult DLA can continue for the 2 days she spends in hospital. However the days she spent in legal detention are also counted as days of residence in the hospital. This means Bernadette is treated as being in hospital for a total period of 14 days.

Bernadette returns to legal detention on 12 July. However on 24 July, Bernadette becomes unwell again and is transferred back to hospital for treatment the same day. This time Bernadette receives treatment in hospital for a further 7 days.

As Bernadette has now been in alternative accommodation without a break for a total of 26 days, her payment of Scottish Adult DLA continues for day 27 and 28 spent in hospital, but is reduced to £nil after 2 days, on 26 July which is the 29th day in alternative accommodation.

Example: an individual who is entitled to Scottish Adult DLA is released from legal detention because of an authorised absence

Marek is entitled to Scottish Adult DLA. He entered legal detention on 30 May for 31 days. His payment of Scottish Adult DLA is reduced to £nil 28 days after he enters legal detention. Therefore, Marek's payment of Scottish Adult DLA is reduced to £nil on 28 June.

Marek is released and leaves legal detention on 30 June because of an authorised absence. He is entitled to receive payment of Scottish Adult DLA from this date because he notifies Social Security Scotland within a month of being released.

Marek returns to legal detention on 26 July for another 31 days. His payment of Scottish Adult DLA is reduced to £nil from the day after the day he returns to legal detention. This means Marek's payment of Scottish Adult DLA is reduced to £nil on 27 July.

Marek is released on 26 August having served the remainder of his sentence. He promptly notifies Social Security Scotland about his release and he is once again entitled to receive payment of Scottish Adult DLA from 26 August onwards.

Pardons

77. Prisoners who are pardoned leave legal detention. Individuals who are pardoned are entitled to receive payments of Scottish Adult DLA when they leave legal detention if they still meet the eligibility criteria. Individuals in these cases cannot receive a backdated payment of Scottish Adult DLA for the time they were in legal detention. This is because the cost of meeting the care needs of individuals are met from public funds while they are in legal detention.

Appeals to the court against convictions

78. An individual can appeal a conviction by challenging the decision of the court when in legal detention. If the appeal is successful the individual both:

- leaves legal detention
- can receive payment of Scottish Adult DLA once they have left legal detention, following a determination without application.

79. Individuals in these cases cannot receive a backdated payment of Scottish Adult DLA for the time they were in legal detention. This is because the cost of meeting the care needs of individuals are met from public funds while they are in legal detention.

Alternative Accommodation and Short-term Assistance

80. Short-term Assistance is a payment available to individuals challenging a determination which has reduced or ended an ongoing award of assistance. This includes re-determinations and appeals.

81. The value of Short-term Assistance is the difference between the value of assistance before the determination and the current rate. Payment of Short-term Assistance lasts for the duration of the re-determination or appeal.

82. An individual whose Scottish Adult DLA has been reduced to nil because they are alternative accommodation is not entitled to Short-term Assistance¹.

1 Scottish Adult DLA regs, reg.52; Sch 1, 1(6)

83. For more information on Short-term Assistance, please refer to the Short-term Assistance chapter.

End of Chapter