

Pension Age Disability Payment - Legal Detention

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Introduction

1. This chapter looks at the effects of legal detention on entitlement to, and payment of Pension Age Disability Payment (PADP).

2. Individuals in receipt of PADP will be paid £nil after 28 days in legal detention¹

1 PADP regs, reg. 22(3)

3. This is because the costs of meeting the care needs of individuals are met from public funds while they are in legal detention. For the purposes of determining payment of PADP, the first day in legal detention for individuals is the day after the day they enter legal detention and the last day is the day before the day they are released.¹

1 PADP regs, reg. 23(2)(a) and (b)

4. This chapter relates to the unscheduled reviews chapter which explains both:

- when an unscheduled review should take place
- what a determination without application is.

Meaning of legal detention

5. To determine entitlement to payment of PADP, 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 PADP regs, reg. 2

6. 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.

7. 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.

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

9. For the purposes of determining entitlement to PADP, legal detention does not include any day in which an individual is an in-patient in a hospital or a hospice¹. The relevant rules for these situations can be found in the Decision Making Guidance chapter on the effect of time spent in care homes and hospitals.

1 PADP regs, reg. 22(2)

10. 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 PADP.

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

Tony has a significant mental health condition and is entitled to PADP. He is convicted of an offence and a custodial sentence was imposed, which means he will be 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 PADP for the first 22 days while he is in hospital. On day 23, he is transferred to legal detention. Even though regulation 22(2) says that a day in hospital or hospice is not counted as a day in legal detention, this is over-ridden when people transfer from one type of alternative accommodation to another.

For the purposes of calculating when a person has been in alternative accommodation for 28 days when they move between hospital and legal detention, the days in hospital count as days in legal detention, and this includes the day of transfer. This means Tony is treated as having already spent 23 days in legal detention, and his 28th day in legal detention is the last day he will receive payment of PADP. From the 29th day, he will be paid £nil but will remain entitled to PADP.

Legal detention locations

11. 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

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

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

14. Being in Legal Detention abroad does not affect an individual satisfying the ordinary and habitual residence requirements for PADP. 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 PADP.¹

1 PADP regs, reg. 9(1)(d)

15. Entitlement to PADP 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 PADP regs, reg. 10(1)(a)

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

Sally is entitled to PADP. She enters legal detention on 1 June for 60 days while visiting Denmark. Sally's payments of PADP 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. Sally was not absent from the UK for more than 13 weeks and is still entitled to PADP.

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

Paul is entitled to PADP. He is legally detained for 160 days on 1 March while visiting the United States. Paul's payments of PADP are reduced to £nil on 29 March as he has spent 28 days in legal detention. Paul is released on 8 August and returns to Scotland 3 days later. Paul is no longer entitled to PADP after 13

weeks spent in the United States. This is because Paul is now considered to be absent from the UK.

Legal Detention and entitlement to PADP

16. Individuals in legal detention are entitled to be paid £nil of PADP from the day after they have been in legal detention for 28 days¹. The 28 day period begins on the day after the day they enter legal detention².

*1 PADP regs, reg. 22(3)
2 PADP regs, reg. 23(2)(a)*

17. Entitlement to PADP continues while payment is set at £nil. This means that individuals will not need to make a new application when they are released from legal detention and payment of PADP will begin again upon release.

Example: an individual enters legal detention after legal proceedings

Emma is entitled to PADP. 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 PADP.

Emma is sentenced to prison for 6 months. She is no longer entitled to be paid PADP after she spends 28 days in prison, after being sentenced. Emma remains entitled to PADP.

18. The Scottish Prison Service will inform Social Security Scotland when an individual has entered, or is released from, legal detention. For more information on this process please follow operational guidance.
19. 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.
20. 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 should complete a determination without application in these circumstances.
21. Individuals may be overpaid PADP 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 Payments chapter.

1 SS Act 2018, s. 56

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

Edward is entitled to the lower rate of PADP. He is sentenced and legally detained in prison on 25 April and is no longer paid PADP after 28 days. This means Edward'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 Edward enters prison, the case manager dealing with Edward's case proceeds to carry out an unscheduled review of Edward's case. The case manager then makes a determination without application that Edward remains entitled to PADP during his legal detention even though payments have been reduced to £nil.

Upon release, Edward will not need to make a new application, and payment of PADP will begin again following a further unscheduled review and determination without application that will be carried out once Social Security Scotland are notified that Edward has been released.

Social Security Scotland confirm that Edward's circumstances remain the same and he is entitled to payment of PADP again from 18 July.

Example: an award of PADP is reviewed after an individual is released from legal detention

Frances is entitled to the lower rate of PADP. She is legally detained on 1 August for 5 months. Frances is no longer paid PADP after 28 days in legal detention.

Frances informs Social Security Scotland when she is released from legal detention on 1 January. This means there is a change of circumstances concerning her award. The case manager will need to follow the steps set out in operational guidance before Frances' payments of PADP can begin again.¹

1 PADP regs, reg. 41(a)

22. It is possible to make an application for PADP while in legal detention. An individual's entitlement to PADP may begin when they are in legal detention¹. The effect of legal detention is to reduce the individual's payments to £nil. When an individual's entitlement starts whilst they are in legal detention, this will occur on the first day of their entitlement until the day they leave legal detention.²

1 PADP regs, reg. 24

2 PADP regs, reg. 24(2)(c)

Example: an application for PADP is made when an individual is in legal detention

Ashley enters legal detention on 1 May and will be released from legal detention on 1 July. Ashley applied for PADP while she is in legal detention, on 12 May.

The case manager determines that Ashley meets the eligibility criteria to be entitled to the higher rate of PADP. Payment of PADP is set at £nil whilst Ashley is in legal detention.

Social Security Scotland is informed of Ashley's release on 1 July. She is now entitled to be paid PADP at the higher rate from 1 July onwards.

Legal detention and Short-term Assistance

23. Short-term Assistance is a payment available to individuals challenging a determination on an ongoing award of assistance. This includes re-determinations and appeals.
24. 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.
25. An individual whose payment of PADP has been reduced to £nil because they are in legal detention is not entitled to Short-term Assistance¹.

1 PADP regs, sch, part 1, para. 1(6)

Types of legal detention

Custodial sentences

26. A custodial sentence is a sentence of imprisonment or detention of an adult offender.
27. 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.
28. 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.
29. Individuals who are given a deferred sentence are still entitled to be paid PADP unless they enter legal detention during this time. If this happens, they will no longer be paid PADP after they spend 28 days in legal detention.

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

Barry is entitled to PADP at the lower rate. A judge rules during legal proceedings that Barry should be given a deferred sentence of 9 months. Barry should still be paid PADP during this time because he is not in legal detention.

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

30. 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.

31. Payment of PADP should begin again once the individual is released from legal detention, so long as they still meet the eligibility criteria.
32. An individual cannot receive backdated payment of PADP for the time they were in legal detention.

Leaving legal detention

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

1 PADP regs, reg. 23(2)(b)

34. The 28 days of continued entitlement to payment of PADP 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 legal detention before their Attendance Allowance award was transferred to PADP does not count.

1 PADP regs, reg. 22(4)

Release on license

35. 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.
36. An individual released on license, including temporary license, is no longer in legal detention. Upon release, payment of PADP can begin again if the individual continues to meet the eligibility criteria.
37. 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

William is entitled to PADP. He is taken in to legal detention and is no longer entitled to payment of PADP 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.

William can start to receive payment of PADP 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

38. 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.

39. Individuals released on temporary license are not imprisoned or detained in legal custody. This means they can be paid PADP. Payment of PADP should resume from the day before 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 PADP regs, reg. 40(a)
2 PADP regs, reg. 23(3)

Example: an individual who is entitled to PADP is released from legal detention on temporary license

Anna is entitled to the lower rate of PADP and is legally detained on 1 March. This means she is no longer entitled to be paid PADP after she spends 28 days in legal detention. She is released from legal detention on temporary license on 1 April.

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

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

40. 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

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

Example: an individual who is entitled to PADP is released from legal detention on bail

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

Example: An individual who is entitled to PADP breaks their bail conditions

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

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

Authorised Absence

42. 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.
43. Individuals released because of an authorised absence can receive payments of PADP because they are not in legal detention.
44. An individual's entitlement to PADP must be considered on each occasion they enter or leave legal detention because of authorised absences. This is because payment of PADP 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.
45. 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 higher rate of PADP.

1 PADP regs, reg. 22(2)

46. 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 PADP when they enter a care home or hospital¹.

1 PADP regs, reg. 23(5)(b)(ii)

Example: an individual who is entitled to PADP transfers from legal detention to a hospital

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

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

As Mary has only been in prison for 12 days, payment of PADP 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 Mary is treated as being in hospital for a total period of 14 days.

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

As Mary has now been in prison for a total of 26 days, her payment of PADP continues for day 27 and 28 spent in hospital, but is reduced to £nil after 2 days on 26 July because she has now been in hospital for 29 days.

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

Jim is entitled the lower rate of PADP. He entered legal detention on 30 May for 31 days. His payment of the PADP is reduced to £nil 28 days after he enters legal detention. Therefore, Jim's payment of PADP is reduced to £nil on 28 June.

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

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

Jim 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 PADP from 26 August onwards.

Pardons

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

Appeals to the court against convictions

48. 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 PADP once they have left legal detention following a determination without application.

49. Individuals in these cases cannot receive a backdated payment of PADP for the time they were in legal detention. This is because the costs of meeting the care needs of individuals are met from public funds while they are in legal detention.

End of chapter