

## SCHEDULE I

Regulation 6(4)

### PART I

#### **Circumstances in which persons are treated as being or not being severely disabled**

##### **Severe disablement**

1.—(1) For the purposes of regulation 6(4) (additional amounts for persons severely disabled), the claimant is to be treated as being severely disabled if, and only if—

- (a) in the case of a claimant who has no partner—
  - (i) he is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) no person who has attained the age of 18 is normally residing with the claimant, nor is the claimant normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iii) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act (invalid care allowance) in respect of caring for him;
- (b) in the case of a claimant who has a partner—
  - (i) both partners are in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies;  
and either a person is entitled to, and in receipt of, an allowance under section 70 of the 1992 Act in respect of caring for one only of the partners or, as the case may be, no person is entitled to, and in receipt of, such an allowance in respect of caring for either partner;
- (c) in the case of a claimant who has a partner and to whom head (b) does not apply—
  - (i) either the claimant or his partner is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act; and
  - (ii) the other partner is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948<sup>(1)</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council; and
  - (iii) no person who has attained the age of 18 is normally residing with the partners, nor are the partners normally residing with such a person, other than a person to whom paragraph 2 applies; and
  - (iv) no person is entitled to and in receipt of an allowance under section 70 of the 1992 Act respect of caring for the person to whom head (c) (i) above applies.

(2) A person shall be treated—

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(1) 1948 c. 29.

- (a) for the purposes of sub-paragraph (1) as being in receipt of attendance allowance or, as the case may be, the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act, for any period—
  - (i) before an award is made but in respect of which the allowance is awarded; or
  - (ii) not covered by an award but in respect of which a payment is made in lieu of an award;
- (b) for the purposes of sub-paragraph (1)(b) as being in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance section 37ZB(3) of the 1992 Act if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (c) for the purposes of sub-paragraph (1), as not being in receipt of an allowance under section 70 of the 1992 Act for any period before the date on which the award is made.

(3) For the purposes of sub-paragraph (1)(c)(ii), a person who has ceased to be registered as blind on regaining his eyesight shall nevertheless be treated as blind and as satisfying the requirements set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

#### **Persons residing with the claimant whose presence is ignored**

2.—(1) For the purposes of paragraph 1(1)(a)(ii), (b)(ii) and (c)(iii), this paragraph applies to the persons specified in the following sub-paragraphs.

- (2) A person who—
  - (a) is in receipt of attendance allowance or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the 1992 Act;
  - (b) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council;
  - (c) is no longer registered as blind in accordance with head (b) but was so registered not more than 28 weeks earlier;
  - (d) lives with the claimant in order to care for him or his partner and is engaged by a charitable or voluntary organisation which makes a charge to the claimant or his partner for the services provided by that person;
  - (e) is a partner of a person to whom head (d) above applies; or
  - (f) is a person who is treated as a child for the purposes of Part IX of the 1992 Act<sup>(2)</sup>.

(3) Subject to sub-paragraph (4), a person who joins the claimant's household for the first time in order to care for the claimant or his partner and immediately before he joined the household, the claimant or his partner was treated as being severely disabled.

(4) Sub-paragraph (3) applies only for the first 12 weeks following the date on which the person first joins the claimant's household.

- (5) A person who is not a close relative of the claimant or his partner and—
  - (a) who is liable to make payments on a commercial basis to the claimant or his partner in respect of his occupation of the dwelling;
  - (b) to whom the claimant or his partner is liable to make payments on a commercial basis in respect of his occupation of that person's dwelling; or

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(2) See section 142(1) of the 1992 Act.

- (c) who is a member of the household of a person to whom head (a) or (b) applies.
- (6) Subject to paragraph 3(3), a person who jointly occupies the claimant's dwelling and who is either—
  - (a) co-owner of that dwelling with the claimant or the claimant's partners (whether or not there are other co-owners); or
  - (b) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of his occupation of that dwelling.
- (7) Subject to paragraph 3(3), a person who is a partner of a person to whom sub-paragraph (6) applies.

**3.—**(1) For the purposes of paragraphs 1 and 2, a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area, but not if each person is separately liable to make payments in respect of his occupation of the dwelling to the landlord.

(2) In sub-paragraph (1), “communal area” means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

(3) Paragraph 2(6) and (7) applies to a person who is a close relative of the claimant or his partner only if the claimant or his partner's co-ownership, or joint liability to make payments to a landlord in respect of his occupation, of the dwelling arose either before 11th April 1988, or, if later, on or before the date upon which the claimant or the claimant's partner first occupied the dwelling in question.

## PART II

### Amount applicable for carers

**4.—**(1) For the purposes of regulation 6(6)(a), this paragraph is satisfied if any of the requirements specified in sub-paragraphs (2) to (4) are met.

(2) A claimant is, or in the case of partners either partner is, or both partners are, entitled to an allowance under section 70 of the 1992 Act (invalid care allowance).

(3) Where an additional amount has been awarded under regulation 6(6)(a) but

- (a) the person in respect of whose care the allowance has been awarded dies; or
- (b) the person in respect of whom the additional amount was awarded ceases to be entitled or ceases to be treated as entitled to the allowance,

this paragraph shall be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (4).

(4) The relevant date for the purposes of sub-paragraph is—

- (a) the Sunday following the death of the person in respect of whose care the allowance has been awarded (or beginning with the date of death if the death occurred on a Sunday);
- (b) where sub-paragraph (a) does not apply, the date on which the person who has been entitled to the allowance ceases to be entitled to that allowance.

**5.** For the purposes of paragraph 4, a person shall be treated as being entitled to and in receipt of an allowance under section 70 of the 1992 Act for any period not covered by an award but in respect of which a payment is made in lieu of an award.

## PART III

### **Amount applicable for former claimants of income support or income-related jobseeker's allowance**

6.—(1) If on the relevant day the relevant amount exceeds the provisional amount, an additional amount (“the transitional amount”) equal to the difference shall be applicable to a claimant to whom sub-paragraph (2) applies.

(2) This sub-paragraph applies to a claimant who, in respect of the day before the relevant day, was entitled to either income support or an income-based jobseeker's allowance.

(3) The relevant day is the day in respect of which the claimant is first entitled to state pension credit.

(4) The provisional amount means the amount of the appropriate minimum guarantee applicable to the claimant on the relevant day but for this paragraph.

(5) The relevant amount means the amount which, on the day before the relevant day, was the claimant's applicable amount—

- (a) for the purposes of determining his entitlement to income support; or
- (b) for the purpose of determining his entitlement to an income-based jobseeker's allowance,

less any of the following amounts included in it—

- (i) any amount determined in accordance with paragraph 2 of Schedule 2 to the Income Support Regulations or paragraph 2 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (ii) any amount by way of a residential allowance applicable in accordance with paragraph 2A of Schedule 2 to the Income Support Regulations or paragraph 3 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iii) any amount by way of family premium applicable in accordance with paragraph 3 of Schedule 2 to the Income Support Regulations or paragraph 4 of Schedule 1 to the Jobseeker's Allowance Regulations;
- (iv) any amount by way of disabled child premium applicable in accordance with paragraph 14 of Schedule 2 to the Income Support Regulations or paragraph 16 of Schedule 1 to the Jobseeker's Allowance Regulations; and
- (v) any amount in respect of a person other than the claimant or his partner by way of enhanced disability premium applicable in accordance with paragraph 13A of Schedule 2 to the Income Support Regulations or paragraph 15A of Schedule 1 to the Jobseeker's Allowance Regulations<sup>(3)</sup>.

(6) In determining the relevant amount under sub-paragraph (5), the applicable amount shall be increased by an amount equal to the amount (if any) payable to the claimant in accordance with Part II of the Income Support (Transitional) Regulations 1987<sup>(4)</sup> (transitional protection) or regulation 87(1) of the Jobseeker's Allowance Regulations (transitional supplement to income-based jobseeker's allowance).

(7) If—

- (a) paragraph 1 of Schedule 7 to the Income Support Regulations or paragraph 1 of Schedule 5 to the Jobseeker's Allowance applied to the claimant or his partner on the day before the relevant day; but

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<sup>(3)</sup> The relevant amending Instrument is [S.I.2000/2629](#).

<sup>(4)</sup> [S.I.1987/1969](#); the relevant amending Instruments are [S.I.1988/521](#) and [670](#), [1989/1626](#) and [1991/1600](#).

- (b) paragraph 2(2) of Schedule 3 does not apply to the claimant or his partner on the relevant day;

then for the purposes of this paragraph the relevant amount shall be determined on the assumption that the provision referred to in sub-paragraph (7)(a) did not apply in his case.

- (8) Subject to sub-paragraph (9), the transitional amount shall—
  - (a) be reduced by a sum equal to the amount (if any) by which the appropriate minimum guarantee increases after the relevant day;
  - (b) cease to be included in the claimant’s appropriate minimum guarantee from the day on which—
    - (i) the sum mentioned in head (a) above equals or exceeds the transitional amount; or
    - (ii) the claimant or the claimant’s partner ceases to be entitled to state pension credit.
- (9) For the purposes of sub-paragraph (8), there shall be disregarded—
  - (a) any break in entitlement not exceeding 8 weeks; and
  - (b) any amount by which the increase in the appropriate minimum guarantee arises solely in consequence of paragraph 2(2) of Schedule 3 ceasing to apply in the claimant’s case.