



Disability Living Allowance and Disability Working Allowance Act 1991

1991 CHAPTER 21

An Act to introduce as social security benefits disability living allowance and disability working allowance; and for connected purposes. [27th June 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Disability living allowance

1 Introduction of disability living allowance

(1) The following paragraph shall be inserted after subsection (1)(c) of section 34 (descriptions of non-contributory benefits) of the Social Security Act 1975 (“the 1975 Act”)—

“(ca) disability living allowance;”.

(2) The following sections shall be inserted after section 37 of that Act—

“37ZA Disability living allowance

- (1) Disability living allowance shall consist of a care component and a mobility component.
- (2) A person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.
- (3) A person may be awarded either component for a fixed period or for life, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.

- (4) The weekly rate of a person's disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.
- (5) The weekly rate of a person's disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.
- (6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Great Britain.

37ZB The care component

- (1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—
 - (a) he is so severely disabled physically or mentally that—
 - (i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods); or
 - (ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or
 - (b) he is so severely disabled physically or mentally that, by day, he requires from another person—
 - (i) frequent attention throughout the day in connection with his bodily functions; or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
 - (c) he is so severely disabled physically or mentally that, at night,—
 - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or
 - (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- (2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—
 - (a) throughout—
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
 - (ii) such other period of 3 months as may be prescribed,
 he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
 - (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) the period of 6 months beginning with that date; or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (3) Three weekly rates of the care component shall be prescribed.

- (4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
 - (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
 - (c) the lowest rate in any other case.
- (5) For the purposes of this section, a person who is terminally ill, as defined in section 35(2C) above, and makes a claim expressly on the ground that he is such a person, shall be taken—
- (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and
 - (b) to satisfy or to be likely to satisfy those conditions for the remainder of his life beginning with that date.
- (6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—
- (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and
 - (b) neither the condition mentioned in sub-paragraph (i) of that paragraph nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—
 - (i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age; or
 - (ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.
- (7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.
- (8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—
- (a) in pursuance—
 - (i) of Part III of the National Assistance Act 1948 or paragraph 2 of Schedule 8 to the National Health Service Act 1977; or
 - (ii) of Part IV of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984; or

- (b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

37ZC The mobility component

- (1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—
 - (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or
 - (b) he falls within subsection (2) below; or
 - (c) he falls within subsection (3) below; or
 - (d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.
- (2) A person falls within this subsection if—
 - (a) he is both blind and deaf; and
 - (b) he satisfies such other conditions as may be prescribed.
- (3) A person falls within this subsection if—
 - (a) he is severely mentally impaired; and
 - (b) he displays severe behavioural problems; and
 - (c) he satisfies both the conditions mentioned in section 37ZB(1)(b) and (c) above.
- (4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—
 - (a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or
 - (b) persons of his age in normal physical and mental health would not require such guidance or supervision.
- (5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.
- (6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.
- (7) A person who is to be taken for the purposes of section 37ZB above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

- (8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.
- (9) A person shall not be entitled to the mobility component of a disability living allowance unless—
- (a) throughout—
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
 - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and
 - (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) the period of 6 months beginning with that date; or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (10) Two weekly rates of the mobility component shall be prescribed.
- (11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
 - (b) the lower rate in any other case.
- (12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 35(2C) above, and who makes a claim expressly on the ground that he is such a person—
- (a) subsection (9)(a) above shall be omitted; and
 - (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9) (b) above”.
- (13) Regulations may prescribe cases in which a person who has the use—
- (a) of an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972; or
 - (b) of any prescribed description of appliance supplied under the enactments relating to the National Health Service being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.

- (14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

37ZD Persons 65 or over

- (1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains the age of 65 otherwise than by virtue of an award made before he attains that age.
- (2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, so far as it so relates, and any provision of Part VI of the Social Security Act 1986 which is relevant to disability living allowance—
- (a) shall have effect subject to modifications, additions or amendments; or
 - (b) shall not have effect.

37ZE Disability living allowance—supplementary

- (1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.
- (2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.
- (3) For the purposes of sections 37ZB(5) and 37ZC(12) above where—
- (a) a person purports to make a claim for a disability living allowance on behalf of another; and
 - (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,
- that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority.”.

2 Attendance allowance and mobility allowance

- (1) In section 35(1) of the 1975 Act (qualifications for attendance allowance) for the words “or presence in Great Britain” there shall be substituted the words “and presence in Great Britain, he is aged 65 or over, he is not entitled to the care component of a disability living allowance”.

- (2) The Attendance Allowance Board is dissolved.
- (3) Section 37A of the 1975 Act (mobility allowance) is repealed.

3 Disability Living Allowance Advisory Board

- (1) There shall be a body, to be known as the Disability Living Allowance Advisory Board (and in this Act referred to as “the Board”).
- (2) Regulations shall confer on the Board such functions relating to disability living allowance or attendance allowance as the Secretary of State thinks fit and shall make provision for—
 - (a) the Board’s constitution;
 - (b) the qualifications of its members;
 - (c) the method of their appointment;
 - (d) the term of office and other terms of appointment of its members;
 - (e) their removal.
- (3) Regulations may also make provision—
 - (a) enabling the Board to appoint persons as advisers to it on matters on which in its opinion they are specially qualified;
 - (b) for the appointment of officers and servants of the Board;
 - (c) enabling the Board to act notwithstanding any vacancy among its members;
 - (d) enabling the Board to make rules for regulating its procedure (including its quorum).
- (4) The expenses of the Board to such an amount as may be approved by the Treasury shall be paid by the Secretary of State out of money provided by Parliament.
- (5) There may be paid as part of the expenses of the Board—
 - (a) to all or any of the members of the Board, such salaries or other remuneration and travelling and other allowances;
 - (b) to advisers to the Board, such fees; and
 - (c) to such other persons as may be specified in regulations such travelling and other allowances (including compensation for loss of remunerative time),as the Secretary of State may with the consent of the Treasury determine.
- (6) The Secretary of State may furnish the Board with such information as he considers that it may need to enable it to discharge its functions.
- (7) Regulations under this section may make such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations.
- (8) In this section “regulations” means regulations made by the Secretary of State by statutory instrument.

4 Management of disability living allowance and attendance allowance etc

- (1) Schedule 1 to this Act shall have effect in relation to the management of disability living allowance and attendance allowance.
- (2) The further amendments specified in Schedule 2 to this Act shall be made.

5 Regulations supplementary to ss. 1 to 4

- (1) The Secretary of State may make such regulations as appear to him necessary or expedient in relation to the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board.
- (2) Without prejudice to the generality of this section, regulations under this section—
 - (a) may provide for the termination or cancellation of awards of attendance allowance and awards of mobility allowance;
 - (b) may direct that a person whose award of either allowance has been terminated or cancelled by virtue of the regulations or who is a child of such a person shall by virtue of the regulations be treated as having been awarded one or more disability living allowances;
 - (c) may direct that a disability living allowance so treated as having been awarded shall consist of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded either component at such weekly rate and for such period as the regulations may specify;
 - (d) may provide for the termination in specified circumstances of an award of disability living allowance;
 - (e) may direct that in specified circumstances a person whose award of disability living allowance has been terminated by virtue of the regulations shall by virtue of the regulations be treated as having been granted a further award of a disability living allowance consisting of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded on the further award either component at such weekly rate and for such period as the regulations may specify;
 - (f) may provide for the review of awards made by virtue of paragraph (b) or (e) above and for the treatment of claims for disability living allowance in respect of beneficiaries with such awards;
 - (g) may direct that for specified purposes certificates issued by the Attendance Allowance Board shall be treated as evidence of such matters as may be specified in the regulations;
 - (h) may direct that for specified purposes the replacement of attendance allowance and mobility allowance by disability living allowance shall be disregarded;
 - (j) may direct that a claim for attendance allowance or mobility allowance shall be treated in specified circumstances and for specified purposes as a claim for disability living allowance or that a claim for disability living allowance shall be treated in specified circumstances and for specified purposes as a claim for attendance allowance or mobility allowance or both;
 - (k) may direct that in specified circumstances and for specified purposes a claim for a disability living allowance shall be treated as having been made when no such claim was in fact made;
 - (l) may direct that in specified circumstances a claim for attendance allowance, mobility allowance or disability living allowance shall be treated as not having been made;
 - (m) may direct that in specified circumstances where a person claims attendance allowance or mobility allowance or both, and also claims disability living

- allowance, his claims may be treated as a single claim for such allowances for such periods as the regulations may specify;
- (n) may direct that cases relating to mobility allowance shall be subject to adjudication in accordance with the provisions of the 1975 Act relating to disability living allowance; and
 - (p) may direct that, at a time before the Attendance Allowance Board is dissolved, in specified circumstances cases relating to attendance allowance shall be subject to adjudication under the system of adjudication for such cases introduced by this Act.
- (3) Regulations under this section may provide that any provision of the 1975 Act which relates to disability living allowance, attendance allowance or mobility allowance, so far as it so relates, and any provision of Part VI of the 1986 Act which is relevant to disability living allowance, attendance allowance or mobility allowance—
- (a) shall have effect subject to modifications, additions or amendments; or
 - (b) shall not have effect.
- (4) Subsections (1), (2) and (3A) of section 166 of the 1975 Act shall apply in relation to the power conferred by this section to make regulations as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to this section.

Disability working allowance

6 Introduction of disability working allowance

- (1) Section 20 (income-related benefits) of the Social Security Act 1986 (“the 1986 Act”) shall be amended as follows.
- (2) The following paragraph shall be inserted after subsection (1)(b)—
“(bb) disability working allowance;”.
- (3) In subsection (2) for the words “or (b)” there shall be substituted the words “, (b) or (bb)”.
- (4) The following subsections shall be inserted after subsection (6)—
“(6A) A person in Great Britain who has attained the age of 16 and qualifies under subsection (6B) below is entitled to a disability working allowance if, when the claim for it is made or is treated as made—
 - (a) he is engaged and normally engaged in remunerative work;
 - (b) he has a physical or mental disability which puts him at a disadvantage in getting a job;
 - (c) his income—
 - (i) does not exceed the applicable amount; or
 - (ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which section 21(3B) below provides is made; and
 - (d) except in such circumstances as may be prescribed, neither he nor, if he has a family, any member of it, is entitled to family credit.
- (6B) Subject to subsection (6E) below, a person qualifies under this subsection if—

- (a) for one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made there was payable to him one or more of the following—
 - (i) an invalidity pension under section 15 of the Social Security Act 1975;
 - (ii) an invalidity pension under section 15 or 16 of the Social Security Pensions Act 1975;
 - (iii) a severe disablement allowance under section 36 of the Social Security Act 1975;
 - (iv) income support, housing benefit or community charge benefit,
 or a corresponding benefit under any enactment having effect in Northern Ireland;
 - (b) when the claim for a disability working allowance is made or is treated as made, there is payable to him one or more of the following—
 - (i) an attendance allowance under section 35 of the Social Security Act 1975;
 - (ii) a disability living allowance under section 37ZA of that Act;
 - (iii) an increase of disablement pension under section 61 of that Act (constant attendance allowance);
 - (iv) an analogous pension increase under a war pension scheme or an industrial injuries scheme,
 or a corresponding benefit under any enactment having effect in Northern Ireland; or
 - (c) when the claim for a disability working allowance is made or is treated as made, he has an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.
- (6C) For the purposes of subsection (6A) above a person has a disability which puts him at a disadvantage in getting a job only if he satisfies prescribed conditions or prescribed circumstances exist in relation to him.
- (6D) In subsection (6A)(c) above “the applicable amount” means the applicable amount at such date as may be prescribed.
- (6E) If the only benefit mentioned in paragraph (a) of subsection (6B) above which is payable to a person as there mentioned is—
- (a) a benefit mentioned in sub-paragraph (iv) of that paragraph; or
 - (b) a corresponding benefit under any enactment having effect in Northern Ireland,
- he only qualifies under that subsection in prescribed circumstances.
- (6F) A disability working allowance shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of a disability working allowance and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under section 63 below.”.

- (5) In the application of subsection (6B) of section 20 to claims made or treated as made before the first day in respect of which disability living allowance is payable paragraph (b) of that subsection shall have effect as if the following sub-paragraph were substituted for sub-paragraph (ii)—

“(ii) a mobility allowance under section 37A of that Act;”.

- (6) In subsection (11)—

- (a) after the definition of family there shall be inserted—

““industrial injuries scheme” means a scheme made under section 159 of the Social Security Act 1975 or under the Industrial Injuries and Diseases (Old Cases) Act 1975;”;

- (b) after the definition of unmarried couple there shall be inserted—

““war pension scheme” means a scheme under which war pensions (as defined in section 25 of the Social Security Act 1989) are provided;”.

- (7) The following paragraph shall be inserted after subsection (12)(f)—

“(ff) specifying the descriptions of pension increases under war pension schemes or industrial injuries schemes that are analogous to the benefits mentioned in subsection (6B)(b)(i) to (iii) above;”.

- (8) The following subsections shall be inserted after subsection (3) of section 21 of the 1986 Act (amount of income-related benefits)—

“(3A) Where a person is entitled to a disability working allowance by virtue of section 20(6A)(c)(i) above, the amount shall be the amount which is the appropriate maximum disability working allowance in his case.

(3B) Where a person is entitled to a disability working allowance by virtue of section 20(6A)(c)(ii) above, the amount shall be what remains after the deduction from the appropriate maximum disability working allowance of a prescribed percentage of the excess of his income over the applicable amount.”.

- (9) The following paragraph shall be inserted after subsection (6)(a) of that section—

“(aa) the appropriate maximum disability working allowance;”.

7 Disability working allowance - supplementary

- (1) After section 27A of the 1986 Act there shall be inserted—

“Disability working allowance

27B Supplementary provisions about disability working allowance

- (1) In this section—

“initial claim” means a claim for a disability working allowance made by a person—

- (a) to whom it has not previously been payable; or

(b) to whom it has not been payable during the period of 2 years immediately preceding the date on which the claim is made or is treated as made; and

“repeat claim” means any other claim for a disability working allowance.

(2) On an initial claim a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is conclusive, except in such circumstances as may be prescribed, that for the purposes of section 20(6A)(b) above he has such a disability (in accordance with regulations under section 20(6C) above).

(3) If—

(a) a repeat claim is made or treated as made not later than the end of the period of 8 weeks commencing with the last day of the claimant’s previous award; and

(b) on the claim which resulted in that award he qualified under section 20(6B) above by virtue—

(i) of paragraph (a) of that subsection; or

(ii) of there being payable to him a benefit under an enactment having effect in Northern Ireland and corresponding to a benefit mentioned in that paragraph,

he shall be treated on the repeat claim as if he still so qualified.

(4) Regulations may provide that an award of a disability working allowance to a person shall terminate if—

(a) a disability working allowance becomes payable in respect of some other person who was a member of his family at the date of his claim for a disability working allowance; or

(b) income support or family credit becomes payable in respect of a person who was a member of the family at that date.”.

(2) The further amendments specified in Schedule 3 to this Act shall have effect.

8 Effect on entitlement to family credit of entitlement to disability working allowance

(1) In subsection (5)(b) of section 20 of the 1986 Act after the words “remunerative work” there shall be inserted the words—

“(bb) except in such circumstances as may be prescribed, neither he nor any member of his family is entitled to a disability working allowance;”.

(2) In subsection (10)(b) of that section after the words “income support” there shall be inserted the words “or a disability working allowance”.

9 Entitlement to other benefits on termination of employment after period of entitlement to disability working allowance

(1) The following subsections shall be inserted after subsection (5) of section 15 of the 1975 Act (invalidity pension)—

“(5A) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under this section having been payable to him; and
- (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(5B) Any day other than a Sunday or a day prescribed under section 17(1)(e) below is a relevant day for the purposes of subsection (5A) above.”.

(2) The following subsection shall be inserted after subsection (6B) of section 36 of that Act (severe disablement allowance)—

“(6C) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of a severe disablement allowance having been payable to him; and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for a severe disablement allowance for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was both incapable of work and disabled.”.

(3) The following section shall be inserted after section 16 of the Social Security Pensions Act 1975—

“16A Entitlement to invalidity pension on termination of employment after a period of entitlement to disability working allowance

(1) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under section 15 or 16 above having been payable to him; and
 - (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,
any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was incapable of work.
- (2) Any day other than a Sunday or a day prescribed under section 17(1)(e) of the principal Act is a relevant day for the purposes of this section.”.
- (4) In Schedule 20 to the 1975 Act, at the end of the definition of “week” there shall be added the words “and except in relation to disability working allowance”.
- (5) Where—
- (a) a person becomes entitled to an invalidity pension or a severe disablement allowance by virtue of section 15(5A) or 36(6C) of the 1975 Act or section 16A of the Social Security Pensions Act 1975; and
 - (b) when he was last entitled to that pension or allowance, it was increased in respect of a dependant by virtue of—
 - (i) regulation 8(6) of the Social Security Benefit (Dependency) Regulations 1977;
 - (ii) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations 1984;
 - (iii) regulation 3 of the Social Security Benefit (Dependency) Amendment Regulations 1984; or
 - (iv) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989,
 for the purpose of determining whether his pension or allowance should be increased by virtue of that regulation for any period beginning with the day on which he again becomes entitled to his pension or allowance, the increase in respect of that dependant shall be treated as having been payable to him on each day between the last day on which his pension or allowance was previously payable and the day on which he again becomes entitled to it.

General

10 Repeals

The enactments mentioned in Schedule 4 to this Act are repealed to the extent specified in the third column of that Schedule.

11 Supplementary

- (1) The Secretary of State may by regulations make—
 - (a) such consequential provision; or

(b) such savings,
as he considers necessary or expedient in preparation for or in connection with the coming into force of any provision of this Act or the operation of any enactment repealed or amended by any such provision during any period when the repeal or amendment is not wholly in force.

(2) Subsections (1), (2) and (3A) of section 166 of the 1975 Act shall apply in relation to the power conferred by this section to make regulations as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to this section.

12 Regulations

- (1) A statutory instrument containing (whether alone or with other provisions)—
- (a) regulations under Chapter II of Part II of the 1975 Act which relate to disability living allowance and are made before the first day in respect of which disability living allowance is payable;
 - (b) regulations under sections 100A to 100D or section 104A of that Act which relate to attendance allowance or disability living allowance and are made before that day;
 - (c) regulations under Part II of the 1986 Act or under sections 100A to 100D or section 104A of the 1975 Act which relate to disability working allowance and are made before the first day in respect of which disability working allowance is payable;
 - (d) the first regulations made under section 3 above; and
 - (e) the first regulations made under section 5 above,

shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (2) A statutory instrument—
- (a) which contains (whether alone or with other provisions) any regulations under this Act; and
 - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) If the Treasury so direct, regulations under this Act shall be made only in conjunction with them.

13 Provision for Northern Ireland

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

14 Administrative expenses

There shall be paid out of money provided by Parliament—

- (a) any increase attributable to the introduction of disability living allowance and the establishment of disability appeal tribunals in the administrative expenses of the Secretary of State or other government department in carrying the 1975 Act into effect which are payable out of money so provided; and
- (b) any increase attributable to the introduction of disability working allowance in the expenses of the Secretary of State attributable to the 1986 Act which are so payable.

15 Short title, commencement and extent

- (1) This Act may be cited as the Disability Living Allowance and Disability Working Allowance Act 1991, and this Act shall be included among the Acts which may be cited together as the Social Security Acts 1975 to 1991.
- (2) Apart from the provisions specified in subsection (3) below, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different provisions of this Act or for different purposes of the same provision.
- (3) The provisions referred to in subsection (2) above are sections 12, 13, 14 and this section.
- (4) The following provisions of this Act extend to Northern Ireland—
 - section 4, so far as it relates to paragraphs 2, 6 and 7, 9, 11, 13 and 14, 18, 20 and 21 of Schedule 2;
 - section 5;
 - section 7, so far as it relates to paragraph 11 of Schedule 3;
 - section 10, so far as it relates to the repeals in Schedule 1 to the House of Commons Disqualification Act 1975 and Schedule 5 to the Value Added Tax Act 1983;
 - section 11;
 - section 12;
 - section 13;
 - section 14; and
 - this section.
- (5) Except as provided by this section, this Act does not extend to Northern Ireland.

EXPLANATORY AND FINANCIAL MEMORANDUM

The Bill amends the law relating to social security so as to introduce two new benefits, disability living allowance and disability working allowance, and make connected changes.

Clause 1 adds provisions concerning disability living allowance to the Social Security Act 1975. New section 37ZA provides a new benefit to be known as disability living allowance which will have two components, a care component and a mobility component. A person's entitlement to disability living allowance may consist of either or both components. Conditions of entitlement to the care component are specified in sections 37ZB and to the mobility component in section 37ZC. For each component, the

main condition is that a person has satisfied specified criteria for 3 months and is likely to continue to do so for at least a further 9 months. Any one of three weekly rates of the care component may be payable depending on which of the specified criteria for the care component is satisfied. One of two weekly rates of the mobility component may be payable according to which of the specified criteria for the mobility component is satisfied. The effect of section 37ZD is that, with certain exceptions people aged over 65 will not be entitled to disability living allowance. Supplementary provisions relating to disability living allowance are in section 37ZE.

Clause 2 makes further amendments to the Social Security Act 1975 connected with the introduction of disability living allowance. It restricts attendance allowance to people over 65 who are not entitled to the care component of a disability living allowance and it dissolves the Attendance Allowance Board. It also abolishes mobility allowance, which is wholly superseded by the mobility component of disability living allowance.

Clause 3 establishes a Disability Living Allowance Advisory Board, provides for the Board's functions, constitution, etc. to be specified in regulations and provides for its expenses to be met by the Secretary of State.

Clause 4 gives effect to *Schedules 1 and 2*. *Schedule 1* contains provisions about the management of disability living allowance and attendance allowance. In place of the existing system of adjudication for attendance allowance by the Attendance Allowance Board, it introduces new adjudication arrangements for both disability living allowance and attendance allowance, including a new right of appeal to a disability appeal tribunal. *Schedule 2* contains consequential amendments.

Clause 5 provides power to make regulations in relation to the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board.

Clause 6 amends sections 20 and 21 of the Social Security Act 1986 to introduce disability working allowance as the fifth income-related benefit. New subsections (6A) and (6B) of section 20 contain the qualifying conditions. Regulations will prescribe the circumstances in which a person is considered to have a disability which puts him at a disadvantage in getting a job. A person is not entitled to a disability working allowance if he or any member of his family is entitled to family credit. New section 20(6E) provides for a disability working allowance to be payable as a fixed award for 26 weeks and that, once awarded, the rate of benefit will not change, unless regulations prescribe otherwise.

Clause 7 makes supplementary provisions about disability working allowance. Subsection (1) inserts new section 27B into the Social Security Act 1986 which provides that, except where regulations prescribe otherwise, a declaration by the claimant that he has a disability which puts him at a disadvantage in getting a job will be sufficient on an initial claim. It also gives power to make regulations to terminate an award if income support, family credit or a disability working allowance becomes payable in respect of a person who is treated as a member of the family of the claimant at the date of his claim. *Subsection (2)* gives effect to the amendments relating to disability working allowance in *Schedule 3*. These amendments, among other things, apply to disability working allowance the system of adjudication introduced for disability living allowance.

Clause 8 amends section 20 of the Social Security Act 1986 so that a person is not entitled to family credit if he or any member of his family is entitled to a disability working allowance.

Clause 9 amends the Social Security Act 1975 and the Social Security Pensions Act 1975 to provide linking rules where, before taking up remunerative work and claiming a disability working allowance, a person was entitled to either an invalidity pension or a severe disablement allowance. If such a person is incapable of work on the first day after he stops work and that day falls not later than 2 years after the end of his final award of invalidity pension or severe disablement allowance, he will become eligible again for whichever of those benefits was previously in payment, without having to serve the normal qualifying period.

Clause 10 and *Schedule 4* provide for repeals.

Clause 11 provides power to make consequential provision and savings by regulations.

Clause 12 contains provision about the making of regulations.

Clause 13 provides that an Order in Council under the Northern Ireland Act 1974 only for purposes corresponding to those of the Bill will be subject to negative resolution procedure.

Clause 14 provides for administrative expenses attributable to the introduction of disability living allowance and disability working allowance to be met out of Votes.

Clause 15 provides for the Bill's short title, commencement and extent.

Financial effects of the Bill

The introduction of disability living allowance will increase expenditure out of Votes on benefit costs by about £120m in 1992/3, rising to about £240m by 1993/4. There will also be a longterm increase in administration costs of around £20m a year to be met from Votes.

Schedule 2 is likely to reduce tax revenue by around £10m a year but this is expected to be more than offset by additional income tax receipts of around £20m a year as a result of increased employment due to the introduction of disability working allowance.

The introduction of disability working allowance will be broadly neutral in expenditure terms: the gross cost of around £85m by 1993/4 will be offset by a reduction in payments of other benefits. A large proportion of this reduction will be in payments from the National Insurance Fund.

Effects of the Bill on public service manpower

The provisional assessment is that there will be a requirement for a net increase of about 900 permanent staff in the Department of Social Security as a result of introducing disability living allowance and a further 200 staff as a result of introducing disability working allowance.

SCHEDULES

SCHEDULE 1

Section 4.

MANAGEMENT OF DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE

Adjudication

- 1 The 1975 Act shall be amended as follows.
- 2 In section 98(1)—
- (a) at the beginning there shall be inserted the words “Subject to section 115C(1) below,”; and
 - (b) for “104” there shall be substituted “104A”.
- 3 (1) In subsection (1) of section 99, after the words “section 98” there shall be inserted the words “(other than a claim which under section 100A(11) or (12) or 104A(5) falls to be treated as an application for a review)”.
- (2) In subsection (2) of that section, after the word “questions,” there shall be inserted the words “and subject also to subsection (2A) below,”.
- (3) The following subsection shall be inserted after that subsection—
- “(2A) The adjudication officer must decide a claim for or question relating to an attendance allowance or a disability living allowance himself.”.

Reviews and appeals

- 4 In section 100—
- (a) in subsection (1), after the word “question” there shall be inserted the words “other than a claim or question relating to an attendance allowance or a disability living allowance,”;
 - (b) in subsection (2), after the word “decision” there shall be inserted the words “falling within subsection (1) above”; and
 - (c) in subsection (7), after the word “amount” there shall be inserted the words “of benefit (other than an attendance allowance or a disability living allowance)”.
- 5 The following sections shall be inserted after that section—

“100A Reviews of decisions of adjudication officers as to attendance allowance or disability living allowance

- (1) On an application under this section made within the prescribed period, a decision of an adjudication officer under section 99 above which relates to an attendance allowance or a disability living allowance may be reviewed on any ground.

- (2) On an application under this section made after the end of the prescribed period, such a decision may be reviewed if—
- (a) the adjudication officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
 - (b) there has been any relevant change of circumstances since the decision was given; or
 - (c) it is anticipated that a relevant change of circumstances will so occur; or
 - (d) the decision was erroneous in point of law; or
 - (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,
- but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.
- (3) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (2)(b) and (c) above.
- (4) On an application under this section made after the end of the prescribed period, a decision of an adjudication officer under section 99 above that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above may be reviewed if there has been a change of medical opinion with respect to his condition or his reasonable expectation of life.
- (5) The claimant shall be given such notification as may be prescribed of a decision which may be reviewed under this section and of his right to a review under subsection (1) above.
- (6) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer stating the grounds of the application and supplying such information and evidence as may be prescribed.
- (7) Regulations—
- (a) may provide for enabling or requiring, in prescribed circumstances, a review under this section notwithstanding that no application under subsection (6) above has been made; and
 - (b) if they do so provide, shall specify under which provision of this section a review carried out by virtue of any such regulations falls.
- (8) Reviews under this section shall be carried out by adjudication officers.
- (9) Different aspects of any question which arises on such a review may be dealt with by different adjudication officers; and for this purpose this section and the other provisions of this Part of this Act which relate to reviews under this section shall apply with any necessary modifications.
- (10) If a review is under subsection (1) above, the officer who took the decision under review shall not deal with any question which arises on the review.

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- (11) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance by an adjudication officer is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.
- (12) Where—
- (a) a claim for an attendance allowance or a disability living allowance in respect of a person has been refused; and
 - (b) a further claim for the same allowance is made in respect of him within the period prescribed under subsection (1) above,
- the further claim shall be treated as an application for a review under that subsection.

100B Further reviews of decisions as to attendance allowance or disability living allowance

- (1) Subsections (2) and (4) of section 100A above shall apply to a decision on a review under subsection (1) of that section as they apply to a decision of an adjudication officer under section 99 above but as if the words “made after the end of the prescribed period” were omitted from each subsection.
- (2) Subsections (1), (2) and (4) of section 100A above shall apply—
- (a) to a decision on a review under subsection (2) or (4) of that section; and
 - (b) to a refusal to review a decision under subsection (2) or (4) of that section,
- as they apply to a decision of an adjudication officer under section 99 above.
- (3) The claimant shall be given such notification as may be prescribed—
- (a) of a decision on a review under section 100A above;
 - (b) if the review was under section 100A(1), of his right of appeal under section 100D below; and
 - (c) if it was under section 100A(2) or (4), of his right to a further review under section 100A(1).

100C Reviews of decisions as to attendance allowance or disability living allowance: supplementary

- (1) An award of an attendance allowance or a disability living allowance on a review under section 100A above replaces any award which was the subject of the review.
- (2) Where a person who has been awarded a disability living allowance consisting of one component applies or is treated as applying for a review under section 100A above and alleges that he is also entitled to the other component, the adjudication officer need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.
- (3) Where a person who has been awarded a disability living allowance consisting of both components applies or is treated as applying for a review

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under section 100A above and alleges that he is entitled to one component at a rate higher than that at which it has been awarded, the adjudication officer need not consider the question of his entitlement to the other component or the rate of that component.

- (4) Where a person has been awarded a component for life, on a review under section 100A above the adjudication officer shall not consider the question of his entitlement to that component or the rate of that component or the period for which it has been awarded unless—
- (a) the person awarded the component expressly applies for the consideration of that question; or
 - (b) information is available to the adjudication officer which gives him reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue.
- (5) No decision which relates to an attendance allowance or a disability living allowance shall be reviewed under section 100A above on the ground that the person is or was at any time terminally ill, within the meaning of section 35(2C) above, unless an application for review is made expressly on that ground either—
- (a) by the person himself; or
 - (b) by any other person purporting to act on his behalf, whether or not that other person is acting with his knowledge or authority;
- and a decision may be so reviewed on such an application, notwithstanding that no claim under section 35(2B) or 37ZB(5) or 37ZC(12) above has been made.
- (6) Where a decision is reviewed under section 100A above on the ground that it is anticipated that a change of circumstances will occur, the decision given on review—
- (a) shall take effect on the day prescribed for that purpose by reference to the date on which the change of circumstances is expected to occur; and
 - (b) shall be reviewed again if the change of circumstances either does not occur or occurs otherwise than on that date.
- (7) Where a claimant has appealed against a decision of an adjudication officer under section 100D below and the decision is reviewed again under section 100A(2) or (4) above by an adjudication officer, then—
- (a) if the adjudication officer considers that the decision which he has made on the review is the same as the decision that would have been made on the appeal had every ground of the appeal succeeded, then the appeal shall lapse; but
 - (b) in any other case, the review shall be of no effect and the appeal shall proceed accordingly.
- (8) Subsections (5) and (7) to (10) of section 104 below apply in relation to a review under section 100A above as they apply to a review under that section but as if—
- (a) subsection (5)(a) were omitted; and

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- (b) in subsection (7) for the words “subsection (1A) above” there were substituted the words “section 100A above on the ground that it was erroneous in point of law”.
- (9) Where an adjudication officer has determined that any amount paid by way of an attendance allowance or a disability living allowance is recoverable under or by virtue of section 53 of the Social Security Act 1986 (overpayments), any person from whom he has determined that it is recoverable shall have the same right of review under section 100A above as a claimant.
- (10) This Act shall have effect in relation to a review by virtue of subsection (9) above as if any reference to the claimant were a reference to the person from whom the adjudication officer has determined that the amount in question is recoverable.

100D Appeals following reviews of decisions as to attendance allowance or disability living allowance

- (1) Where an adjudication officer has given a decision on a review under section 100A(1) above, the claimant or such other person as may be prescribed may appeal—
 - (a) in prescribed cases, to a disability appeal tribunal; and
 - (b) in any other case, to a social security appeal tribunal.
- (2) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.
- (3) An award of an attendance allowance or a disability living allowance on an appeal replaces any award which was the subject of the appeal.
- (4) Where a person who has been awarded a disability living allowance consisting of one component alleges on an appeal that he is also entitled to the other component, the tribunal need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.
- (5) Where a person who has been awarded a disability living allowance consisting of both components alleges on an appeal that he is entitled to one component at a rate higher than that at which it has been awarded, the tribunal need not consider the question of his entitlement to the other component or the rate of that component.
- (6) The tribunal shall not consider—
 - (a) a person’s entitlement to a component which has been awarded for life; or
 - (b) the rate of a component so awarded; or
 - (c) the period for which a component has been so awarded,unless—
 - (i) the appeal expressly raises that question; or
 - (ii) information is available to the tribunal which gives it reasonable grounds for believing that entitlement to the

component, or entitlement to it at the rate awarded or for that period, ought not to continue.

(7) Schedule 10A to this Act has effect with respect to disability appeal tribunals.”.

6 In section 101—

- (a) in subsection (1), after the words “social security appeal tribunal” there shall be inserted the words “or disability appeal tribunal”; and
- (b) the words “of a social security appeal tribunal” shall be omitted from subsection (5A)(a).

7 (1) In section 102(1)—

- (a) after the words “social security appeal tribunal” there shall be inserted the words “, a disability appeal tribunal”; and
- (b) for the word “or”, in the second place where it occurs, there shall be substituted the words “, subject to subsection (3) below, or the”.

(2) The following subsection shall be added after subsection (2)—

“(3) A social security appeal tribunal may not determine a question by virtue of subsection (1) above if an appeal in relation to such a question would have lain to a disability appeal tribunal.”.

8 The words “(other than a decision relating to an attendance allowance or a disability living allowance)” shall be inserted in section 104—

- (a) in subsection (1), after the words “a Commissioner”; and
- (b) in subsection (1A), after the words “adjudication officer”, in the first place where they occur.

9 The following section shall be inserted after that section—

“104A Reviews of decisions on appeal as to attendance allowance and disability living allowance

- (1) Any decision under this Act of a social security appeal tribunal, a disability appeal tribunal or a Commissioner which relates to an attendance allowance or a disability living allowance may be reviewed at any time by an adjudication officer if—
 - (a) he is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
 - (b) there has been any relevant change of circumstances since the decision was given; or
 - (c) it is anticipated that a relevant change of circumstances will so occur; or
 - (d) the decision was that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above and there has been a change of medical opinion with respect to his condition or his reasonable expectation of life; or
 - (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,

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but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.

- (2) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (1)(b) and (c) above.
- (3) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer, stating the grounds of the application and supplying such information and evidence as may be prescribed.
- (4) Reviews under this section shall be carried out by adjudication officers.
- (5) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance on an appeal is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.
- (6) Subsections (1), (2) and (4) of section 100A above shall apply—
 - (a) to a decision on a review under this section; and
 - (b) to a refusal to review a decision such as is mentioned in subsection (1) above,as they apply to a decision of an adjudication officer under section 99 above.
- (7) The person whose claim was the subject of the appeal the decision on which has been reviewed under this section shall be given such notification as may be prescribed—
 - (a) of the decision on the review; and
 - (b) of his right to a further review under section 100A(1) above.
- (8) Section 100A(9) above and section 100C(1) to (5) above shall apply in relation to a review under this section as they apply to a review under section 100A above.
- (9) Subsections (1ZA), (3A) and (5) of section 104 above shall apply in relation to a review under this section as they apply to a review under that section but as if—
 - (a) in subsection (1ZA), “(1)(c)” were substituted for “(1)(bb)”;
 - (b) in subsection (3A), “(3)” were substituted for “(2)”;
 - (c) subsection (5)(a) were omitted.”.

10 In section 115(2) after the words “social security appeal tribunal,” there shall be inserted the words “a disability appeal tribunal,”.

11 The following paragraph shall be inserted after section 115A(2)(d)—
“(dd) a disability appeal tribunal;”.

12 The following paragraph shall be inserted after section 115B(2)(c)—
“(cc) a disability appeal tribunal;”.

13 The following sections shall be inserted after section 115B—

“115C References of claims relating to attendance allowance and disability living allowance to medical practitioners and Disability Living Allowance Advisory Board

- (1) Before a claim for an attendance allowance or a disability living allowance or any question relating to such an allowance is submitted to an adjudication officer under section 98 above the Secretary of State may refer the person in respect of whom the claim is made or the question is raised to a medical practitioner for such examination and report as appears to him to be necessary—
 - (a) for the purpose of providing the adjudication officer with information for use in determining the claim or question; or
 - (b) for the purpose of general monitoring of claims for attendance allowances and disability living allowances.
- (2) An adjudication officer may refer—
 - (a) a person in respect of whom such a claim is made or such a question is raised;
 - (b) a person who has applied or is treated as having applied for a review under section 100A or 104A above,
to a medical practitioner for such examination and report as appears to the adjudication officer to be needed to enable him to reach a decision on the claim or question or the matter under review.
- (3) The Secretary of State may direct adjudication officers to refer for advice to a medical practitioner who is an officer of the Secretary of State any case falling within a specified class of cases relating to attendance allowance or disability living allowance, and an adjudication officer may refer for advice any case relating to attendance allowance or disability living allowance to such a medical practitioner without such a direction.
- (4) A medical practitioner who is an officer of the Secretary of State and to whom a case or question relating to an attendance allowance or a disability living allowance is referred under section 115A above or subsection (3) above may refer the case or question to the Disability Living Allowance Advisory Board for advice.
- (5) Such a medical practitioner may obtain information about such a case or question from another medical practitioner.
- (6) Where—
 - (a) the Secretary of State has exercised the power conferred on him by subsection (1) above or an adjudication officer has exercised the power conferred on him by subsection (2) above; and
 - (b) the medical practitioner requests the person referred to him to attend for or submit himself to medical examination; but
 - (c) he fails without good cause to do so,the adjudication officer shall decide the claim or question or matter under review against him.

115D Medical examination etc. in relation to appeals to disability appeal tribunals

- (1) Where an appeal has been brought under section 100D(1)(a) above, a person who may be nominated as chairman of a disability appeal tribunal may, if prescribed conditions are satisfied, refer the claimant to a medical practitioner for such examination and report as appears to him to be necessary for the purpose of providing a disability appeal tribunal with information for use in determining the appeal.
- (2) At a hearing before a disability appeal tribunal, except in prescribed circumstances, the tribunal—
 - (a) may not carry out a physical examination of the claimant; and
 - (b) may not require the claimant to undergo any physical test for the purpose of determining whether he satisfies the condition mentioned in section 37ZC(1)(a) above.”.

Disability appeal tribunals

- 14 On the day when this paragraph comes into force, and by virtue of its operation—
- (a) the President of social security appeal tribunals and medical appeal tribunals shall become President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals;
 - (b) each regional chairman of social security appeal tribunals and medical appeal tribunals shall become regional chairman of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
 - (c) each other full-time chairman of social security appeal tribunals and medical appeal tribunals shall become full-time chairman of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals.

- 15 The following shall be substituted for paragraph 1A(1) of Schedule 10 to the 1975 Act and the heading immediately preceding it—

“The President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals and regional chairmen and other full-time chairmen

- 1A (1) The Lord Chancellor may, after consultation with the Lord Advocate, appoint—
- (a) a President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
 - (b) regional and other full-time chairmen of such tribunals.”.

- 16 The following Schedule shall be inserted after that Schedule—

“SCHEDULE 10A

DISABILITY APPEAL TRIBUNALS

- 1 A disability appeal tribunal shall consist of a chairman and two other persons.

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- 2 Section 97(2C) to (2E) above shall have effect in relation to the chairman of a disability appeal tribunal as they have effect in relation to the chairman of a social security appeal tribunal.
- 3 The President shall constitute for the whole of Great Britain, to act for such areas as he thinks fit and be composed of such persons as he thinks fit to appoint, panels of persons to act as members of disability appeal tribunals.
- 4 There shall be two panels for each area.
- 5 One panel shall be composed of medical practitioners.
- 6 The other shall be composed of persons who are experienced in dealing with the needs of disabled persons—
- (a) in a professional or voluntary capacity; or
 - (b) because they are themselves disabled,
- but may not include medical practitioners.
- 7 In considering the appointment of members of the panels the President shall have regard to the desirability of appointing disabled persons.
- 8 Paragraph 1(2A) and (6) of Schedule 10 above have effect in relation to panels constituted under this Schedule as they have effect in relation to the panels mentioned in section 97(2A) of this Act.
- 9 Of the members of a tribunal other than the chairman one shall be drawn from the panel mentioned in paragraph 5 above.
- 10 The other shall be drawn from the panel mentioned in paragraph 6 above.
- 11 Paragraphs 1A(11) and 1B to 3 of Schedule 10 above apply to disability appeal tribunals as they apply to social security appeal tribunals.
- 12 In summoning members of a panel to serve on a tribunal, the clerk to the tribunal shall have regard to the desirability of at least one of the members of the tribunal being a disabled person.
- 13 If practicable, at least one of the members of the tribunal shall be of the same sex as the claimant.”.

- 17 In paragraph 7A of Schedule 13 (procedure regulations) after the words “social security appeal tribunal” there shall be inserted the words “, a disability appeal tribunal”.

Financial arrangements

- 18 The following paragraph shall be inserted after section 135(2)(c)—
- “(ca) a disability living allowance;”.

Making of claim condition of entitlement

- 19 In section 165A(3) for the words from “for an attendance” to “of another” there shall be substituted the words “on behalf of another for an attendance allowance by virtue of section 35(2B) above or for a disability living allowance by virtue of section 37ZB(5) or 37ZC(12) above”.

Status: This is the original version (as it was originally enacted).

Interpretation

- 20 In Schedule 20, in the definition of President for the words “and medical appeal tribunals” there shall be substituted the words “, medical appeal tribunals and disability appeal tribunals”.

SCHEDULE 2

Section 4.

DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE: AMENDMENTS

Vehicles (Excise) Act 1971 (c. 10)

- 1 In section 7(2) of the Vehicles (Excise) Act 1971 (exemption from duty of vehicles used by disabled persons) for the words “mobility allowance or” there shall be substituted—
- (a) in the first place where they occur, the words “disability living allowance by virtue of entitlement to the mobility component at the higher rate or”; and
 - (b) in the second place, the words “disability living allowance by virtue of such entitlement or of”.

Tribunals and Inquiries Act 1971 (c. 62)

- 2 (1) In section 7(3) of the Tribunals and Inquiries Act 1971 (chairmen etc.) for “or (c)” there shall be substituted “, (c) or (d)”.
- (2) In Schedule 1 to that Act (tribunals under general supervision of Council on Tribunals) the following paragraph shall be added at the end of the second column of the entry relating to Social Security—
- “(d) disability appeal tribunals constituted under Schedule 10A to that Act.”.

The 1975 Act

- 3 (1) In subsection (2B)(b) (which relates to attendance allowance for the terminally ill) of section 35 of that Act for the words “specified in a certificate issued by virtue of paragraph (a) above” there shall be substituted the words “for which he is entitled to attendance allowance”.
- (2) The following subsection shall be substituted for subsection (3) (weekly rate of attendance allowance) of that section—
- “(3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in relation thereto in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (2)(b) above he has satisfied or is likely to satisfy both the conditions mentioned in subsection (1)(a) above and subsection (1)(b) above, and shall be the lower rate in any other case.”.
- (3) The words “or is treated as making” shall be inserted after the word “makes” in subsections (4) and (4A).

- (4) At the end of paragraph (a) of subsection (6) there shall be added the words “or section 7 of the Mental Health (Scotland) Act 1984”.
- 4 In section 37(2) of that Act (invalid care allowance) after the words “attendance allowance” there shall be inserted the words “or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate”.
- 5 In subsection (4) of section 165D of that Act (restrictions on entitlement to benefit in certain cases of error) in the definition of “adjudicating authority”—
- (a) in paragraph (a), after the words “a social security appeal tribunal” there shall be inserted the words “, a disability appeal tribunal”; and
 - (b) in paragraph (b), after the words “the Supplementary Benefits Commission,” there shall be inserted the words “the Attendance Allowance Board,”.
- House of Commons Disqualification Act 1975 (c. 24)

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 6 In the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975, in Part II of Schedule 1 (bodies of which all members are disqualified), there shall be inserted, at the appropriate places in alphabetical order,—
- “The Disability Living Allowance Advisory Board”.

House of Commons Disqualification Act 1975

- 7 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) in—
- (a) the entry beginning “A member of a panel appointed under section 7 of the Tribunals and Inquiries Act 1971”;
 - (b) the entry beginning “A regional or other full-time Chairman”; and
 - (c) the entry for the President of Social Security Appeal Tribunals and Medical Appeal Tribunals,
- for the words “and Medical Appeal Tribunals” there shall be substituted the words “, Medical Appeal Tribunals and Disability Appeal Tribunals”.

Social Security (Miscellaneous Provisions) Act 1977 (c. 5)

- 8 In section 13(1) of the Social Security (Miscellaneous Provisions) Act 1977 (mobility allowances for certain persons eligible for invalid carriages) for the words from “section 37A” to the end there shall be substituted the words “section 37ZC of the principal Act (which relates to the mobility component of a disability living allowance) to satisfy the condition mentioned in subsection (1)(a) of that section and to fall within paragraphs (a) and (b) of subsection (9) by virtue of having satisfied or being likely to satisfy that condition throughout both the periods mentioned in those paragraphs.”.

Capital Gains Tax Act 1979 (c. 14)

- 9 (1) In sub-paragraph (1) of paragraph 5 of Schedule 1 to the Capital Gains Tax Act 1979 (application of provisions about reliefs in relation to property held on trust

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for disabled persons) after the words “attendance allowance” there shall be inserted the words “or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate”.

- (2) In sub-paragraph (2) of that paragraph after the words “Ireland) Act 1975” there shall be inserted the words “and “a disability living allowance” means a disability living allowance under section 37ZA of the Social Security Act 1975”.

Social Security Act 1980 (c. 30)

- 10 At the end of subsection (2) of section 17 of the Social Security Act 1980 (proof of decisions of statutory authorities) there shall be added the words “and a disability appeal tribunal appointed under Schedule 10A to that Act”.

- 11 The following sub-paragraphs shall be substituted for paragraph 12(3) of Part II of Schedule 3 to that Act (regulations not requiring prior submission to Social Security Advisory Committee)—

“(3) Regulations contained in a statutory rule which states that the regulations relate only to matters which in accordance with the said Act of 1975 or any enactment directed to be construed as one with it, have been referred to the Attendance Allowance Board for Northern Ireland.

(4) Regulations under section 37ZB(3) or section 37ZC(10) of the principal Act (under which respectively the rates of the care component and the mobility component of disability living allowance may be prescribed).”.

Transport Act 1982 (c. 49)

- 12 In section 70(2)(a) of the Transport Act 1982 (payments in respect of applicants for exemption from wearing seat belts) after sub-paragraph (i) there shall be inserted—
“(iA) a disability living allowance under section 37ZA of that Act;”.

Value Added Tax Act 1983 (c. 55)

- 13 (1) In item 12 of Group 14 (drugs, medicines, aids for the handicapped) of Schedule 5 (zero-rating) to the Value Added Tax Act 1983 after the words “in receipt of” there shall be inserted the words “a disability living allowance by virtue of entitlement to the mobility component or of”.

- (2) In the seventh note to that Group after the words “item 12” there shall be inserted the words ““disability living allowance” is a disability living allowance within the meaning of section 37ZA of the Social Security Act 1975;” and the words “section 37A of the Social Security Act 1975 or” shall be omitted.

Inheritance Tax Act 1984 (c. 51)

- 14 (1) In section 74(4) of the Inheritance Tax Act 1984 (disabled persons for purposes of provisions about pre-1981 trusts for disabled persons) after paragraph (b) there shall be inserted “, or

(c) is in receipt of a disability living allowance under section 37ZA of the Social Security Act 1975 by virtue of entitlement to the care component at the highest or middle rate.”.

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- (2) In section 89(4) of that Act (disabled persons for purposes of provisions about other trusts for disabled persons) after paragraph (b) there shall be inserted “, or
- (c) in receipt of a disability living allowance under section 37ZA of the Social Security Act 1975 by virtue of entitlement to the care component at the highest or middle rate.”.

The 1986 Act

- 15 The words “(other than attendance allowance and disability living allowance)” shall be inserted—
- (a) in section 52(3) of the 1986 Act (adjudication as to income-related benefits) after the words “benefit under that Act”; and
- (b) at the end of paragraph 4(1) of Schedule 7 to that Act (adjudication as to certain former benefits).
- 16 In section 63 of that Act (annual up-rating of benefits)—
- (a) the following paragraph shall be inserted after subsection (1)(a)—
- “(aa) specified in regulations under section 37ZB(3) or 37ZC(10) of the Social Security Act 1975;” and
- (b) in subsection (3)(b), after “or (iv),” there shall be inserted “(aa),”.
- 17 In Schedule 6 to that Act (Christmas bonus for pensioners), in paragraph 1(2), the following paragraph shall be inserted after paragraph (a) of the definition of “attendance allowance”—
- “(aa) a disability living allowance under that Act;”.

Income and Corporation Taxes Act 1988 (c. 1)

- 18 In section 617(1)(a) of the Income and Corporation Taxes Act 1988 (treatment of social security benefits and contributions for tax purposes) after the words “mobility allowance,” there shall be inserted the words “disability living allowance;”.

Social Security Act 1989 (c. 24)

- 19 In Part I of Schedule 2 to the Social Security Act 1989 (persons employed in social security administration or adjudication)—
- (a) in the entry relating to adjudicating bodies, after the words “a social security appeal tribunal;” there shall be inserted—
- “(aa) a disability appeal tribunal;”;
- (b) the following entry shall be inserted after the entry relating to adjudicating bodies—

“The Disability Living Allowance Advisory Board

A member of the Disability Living Allowance Advisory Board.

An officer or servant of that Board.”; and

- (c) in the entry relating to former statutory bodies and officers after the words “National Assistance Board” there shall be inserted—
- “(c) the former Attendance Allowance Board.”.

Status: This is the original version (as it was originally enacted).

Capital Allowances Act 1990 (c. 1)

- 20 In section 22(6)(a) of the Capital Allowances Act 1990 (first-year allowances: transitional relief for regional projects) for the words from “mobility” to “or”, in the first place where it occurs, there shall be substituted the words “a disability living allowance under the Social Security Act 1975 by virtue of entitlement to the mobility component or of mobility allowance under”.
- 21 In section 36(4)(a) of that Act (definition of “motor car”) for the words from “a mobility” to “or” there shall be substituted the words “a disability living allowance under the Social Security Act 1975 by virtue of entitlement to the mobility component or of mobility allowance under”.

Courts and Legal Services Act 1990 (c. 41)

- 22 In Schedule 11 to the Courts and Legal Services Act 1990 (judges etc barred from legal practice) the following entry shall be substituted for the entry beginning “President of Social Security Appeal Tribunals”—
- “President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals or regional or other full-time chairman of such tribunals”.

SCHEDULE 3

Section 7.

DISABILITY WORKING ALLOWANCE: AMENDMENTS

PART I

AMENDMENTS OF 1986 ACT

Administration

- 1 The 1986 Act shall be amended as follows.
- 2 The following paragraph shall be inserted after section 51(2)(d)—
- “(dd) disability working allowance;”.

Adjudication

- 3 (1) The following subsection shall be inserted after section 52(3)—
- “(3A) Subject to subsections (9) and (10) below, the following provisions of the Social Security Act 1975 shall have effect for the purposes of disability working allowance as they have effect for the purposes of attendance allowance and disability living allowance—
- (a) those mentioned in subsection (3) above;
 - (b) section 104A; and
 - (c) sections 115A to 115D.”.
- (2) In subsection (4) of that section—

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- (a) after the words “virtue of subsection (3)” there shall be inserted the words “or (3A)”; and
- (b) at the end there shall be added the words “or in relation to disability working allowance”.

(3) The following subsections shall be added at the end of that section—

“(9) In their application to disability working allowance the provisions of the Social Security Act 1975 mentioned in subsection (3A) above shall have effect as if—

- (a) in sections 100A(2)(b) and 104A(1)(b), for the words “any relevant” there were substituted the words “any prescribed”;
- (b) sections 100A(2)(c), (3), (4) and (11), 100C(2) to (5), 100D(4) to (6), 104A(1)(c) and (d), (2) and (5) and 115C(4) were omitted;
- (c) the following subsection were substituted for section 104A(9)—

“(9) Subsections (3A) and (5) of section 104 above shall apply in relation to a review under this section as they apply to a review under that section but as if—

- (a) in subsection (3A), “(3)” were substituted for “(2)”; and
- (b) subsection (5)(a) were omitted.”;
- (d) the following subsection were substituted for section 115C(3)—

“(3) An adjudication officer may refer for advice any case relating to attendance allowance or disability living allowance to a medical practitioner who is an officer of the Secretary of State.”; and

- (e) the following subsection were substituted for section 115C(5)—

“(5) A medical practitioner who is an officer of the Secretary of State and to whom a question relating to attendance allowance or disability living allowance is referred under section 115A above may obtain information about it from another medical practitioner.”.

(10) In their application to disability working allowance sections 100A(1) and (2) (b) and 104A(1)(b) of the Social Security Act 1975 shall have effect subject to section 20(6F) above.”.

Overpayments

- 4 The following paragraph shall be inserted after section 53(10)(d)—
- “(e) disability working allowance;”.

Annual up-rating of benefits

- 5 In section 63—
- (a) in subsection (1)(i) after the words “section 21(6)(a)” there shall be inserted the words “or (aa)”; and
 - (b) the following sub-paragraph shall be inserted after subsection (13)(b)(ii)—
- “(iii) to disability working allowance.”.

Status: This is the original version (as it was originally enacted).

Reciprocal arrangements

- 6 In section 65(4) after the words “family credit” there shall be inserted the words “, disability working allowance”.

Crown employment

- 7 In section 79(3) after the words “family credit” there shall be inserted the words “and disability working allowance”.

Financial provision

- 8 In section 85—
- (a) the following sub-paragraph shall be inserted after subsection (1)(a)(ii)—
“(iiA) disability working allowance;”; and
 - (b) in subsection (9) after the words “family credit,” there shall be inserted the words “disability working allowance,”.

PART II

AMENDMENTS OF OTHER ACTS

Child Care Act 1980 (c. 5)

- 9 In section 45(1A) of the Child Care Act 1980 (no liability to contribute to maintenance) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.

Transport Act 1982 (c. 49)

- 10 In section 70(2)(b) of the Transport Act 1982 (payments in respect of applicants for exemption from wearing seat belts) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.

Income and Corporation Taxes Act 1988 (c. 1)

- 11 In section 617(2)(a) of the Income and Corporation Taxes Act 1988 (treatment of social security benefits and contributions for tax purposes) after the words “family credit” there shall be inserted the words “, disability working allowance”.

Education Reform Act 1988 (c. 40)

- 12 In section 110(3)(b) of the Education Reform Act 1988 (charges and remissions policies) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.

Children Act 1989 (c. 41)

- 13 In section 17(9) of the Children Act 1989 (no repayment of assistance) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.

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- 14 In section 29(3) of that Act (no recoupment of costs) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.
- 15 In paragraph 21(4) of Part III of Schedule 2 to that Act (no liability to contribute to maintenance) for the words “or family credit” there shall be substituted the words “, family credit or disability working allowance”.

SCHEDULE 4

Section 10.

REPEALS

| <i>Chapter</i> | <i>Short title</i> | <i>Extent of repeal</i> |
|----------------|---|--|
| 1975 c. 14. | Social Security Act 1975. | Section 34(1)(cc). In section 35—in subsection (2), the words from “that specified” to “as being”; in subsection (2B)(a)(i), the words “the date determined under section 105 or 106 below as”; subsection (4) (b) and the word “and” immediately preceding it; subsection (5); and in subsection (6)(b), the words from “or to young” to the end. Section 37A. In section 101(5A), the words “of a social security appeal tribunal”. Sections 105 and 106. Section 115A(2)(f). Section 115B(2)(e). Section 135(2)(cc). Section 140. In section 165D(4), in paragraph (a) of the definition of “adjudicating authority”, the words “the Attendance Allowance Board”. In Schedule 4, in Part III, paragraph 3A. Schedule 11. In Schedule 16, in Part II, paragraph 7. |
| 1975 c. 24. | House of Commons Disqualification Act 1975. | In Schedule 1, in Part II, the entry relating to the Attendance Allowance Board. |

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| <i>Chapter</i> | <i>Short title</i> | <i>Extent of repeal</i> |
|----------------|--|--|
| 1975 c. 60. | Social Security Pensions Act 1975. | Section 22. In Schedule 4, paragraphs 47 and 52. |
| 1977 c. 49. | National Health Service Act 1977. | In Schedule 15, paragraph 64. |
| 1978 c. 29. | National Health Service (Scotland) Act 1978. | In Schedule 16, paragraph 40. |
| 1979 c. 18. | Social Security Act 1979. | Section 2(4). Section 3. |
| 1982 c. 49. | Transport Act 1982. | Section 70(2)(a)(ii). |
| 1983 c. 55. | Value Added Tax Act 1983. | In Schedule 5, in the seventh note to Group 14, the words “section 37A of the Social Security Act 1975 or”. |
| 1986 c. 50. | Social Security Act 1986. | Sections 71 and 72. In Schedule 5, paragraph 11. |
| 1988 c. 7. | Social Security Act 1988. | In section 1(2), in paragraph (a), the words from “by” to “that Act”, in paragraph (b), the words “by the Board or by such a delegate”, in paragraph (c), the words from “by the Board” to “1975” and the word “and”, and paragraph (d). |
| 1989 c. 24. | Social Security Act 1989. | Section 8. In Schedule 2, in Part I, paragraph (b) of the entry relating to adjudicating bodies. In Schedule 3, paragraph 8. In Schedule 7, paragraph 14. |
| 1990 c. 27. | Social Security Act 1990. | Section 1(3), (4) and (5). |