

# WELFARE REFORM AND PENSIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY

#### *Commentary*

#### *Section 66: Attendance Allowance*

##### **Regulation-making powers**

Currently, the rules that specify the conditions of entitlement and the circumstances in which a person qualifies for Attendance Allowance (AA), are set out in primary legislation, in the Contributions and Benefits Act (sections 64(2) and 64(3)). The present lack of regulation-making powers in AA means, for example, that when proposed changes apply to both AA and Disability Living Allowance (DLA), which are very closely related benefits, it is not possible to introduce the changes simultaneously through regulations.

*Subsection (1)* introduces a regulation-making power for AA similar to the power to make regulations for DLA.

It inserts a *new section 64(4)* into the Contributions and Benefits Act, to create a power to prescribe circumstances in which the AA night attendance or day attendance conditions are, or are not, to be taken as met.

It is intended that the regulations would be used when the conditions of entitlement to AA needed to be amended or clarified: for example, if a judicial decision departed significantly from the policy intention.

##### **Attendance Allowance for the terminally ill**

AA can be awarded, and special rules applied, in respect of people who are terminally ill. Section 66 (1) of the Contributions and Benefits Act refers to entitlement “for the remainder of his life”. This can give the mistaken impression that entitlement under the special rules for people who are terminally ill can never be changed, even if their prognosis improves. The definition of “terminally ill” is in section 66(2)(a), and this Act does not seek to change it.

*Subsection (2)* amends sections 66(1)(a) and (b) of the Act to make it clear that entitlement to AA under the special rules for terminally ill people only applies during the period in which a person is classed as “terminally ill”. Section 67 of this Act makes a similar amendment to awards of DLA “for life”.