

1976 No. 409**SOCIAL SECURITY****The Social Security (Invalid Care Allowance)
Regulations 1976**

Made - - - - - *15th March 1976*
Laid before Parliament *22nd March 1976*
Coming into Operation *12th April 1976*

ARRANGEMENT OF REGULATIONS**PART I***General*

1. Citation and commencement
2. Interpretation

PART II*Miscellaneous Provisions Relating to Carer's Allowance*

3. Prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons
4. Circumstances in which persons are or are not to be treated as engaged or regularly and substantially engaged in caring for severely disabled persons
5. Circumstances in which persons are to be regarded as receiving full-time education
6. Severely disabled persons prescribed for the purposes of section 37(1)(c) of the Act
7. Manner of electing the person entitled to carer's allowance in respect of a severely disabled person where but for section 37(7) of the Act more than one person would be entitled to carer's allowance in respect of that severely disabled person
8. Circumstances in which a person is or is not to be treated as gainfully employed
9. Conditions relating to residence and presence in Great Britain
- 10A. Women aged 65 before 28th October 1994
- 11A. Men aged 65 before 28th October 1994
14. Application of the Social Security (General Benefit) Regulations 1974 to carer's allowance.

PART III

Consequential Amendments of Regulations

19. Amendment of the Social Security (Credits) Regulations 1975
20. Amendment of the Social Security Benefit (Persons Abroad) Regulations 1975

SCHEDULE

SCHEDULE 1—Provisions of the Social Security (General Benefit) Regulations 1974 applied to carer's allowance

The Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 13(4), 37, 40(2), 49, 79(1), 80, 81(1), (2) and (6), 82(1), (5) and (6), 84(1) and (2), 85(1), 86(5) and 119(3) of the Social Security Act 1975(a), section 36(7) of the National Insurance Act 1965(b), as continued in force by regulation 2(2) of the Social Security (Graduated Retirement Benefit) Regulations 1975(c), and of all other powers enabling her in that behalf, and after reference to the National Insurance Advisory Committee, hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Social Security (Invalid Care Allowance) Regulations 1976 and shall come into operation on 12th April 1976.

Interpretation

2.—(1) ►In these regulations, “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 (d).◀

(2) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which may re-enact or replace it, with or without modification.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e), shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

►Disapplication of section 1(1A) of the Administration Act

2A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

(a) ►◀

(b) to any claim for ►carer's allowance◀ made or treated as made before 9th February 1998;

Reg. 2(1) substituted by reg. 2(2) of S.I. 1996/2744 as from 25.11.96.

Reg. 2A inserted by reg. 11 of S.I. 1997/2676 as from 1.12.97.

Reg. 2A(a) omitted by reg. 2(1) of S.I. 2003/937 as from 6.4.03. Words substituted in reg. 2A(a) & (b) by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

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- (a) 1975 c. 14.
 (b) 1965 c. 51.
 (c) S.I. 1975/557.
 (d) 1992 c. 4.
 (e) 1889 c. 63.

Regs. 2A-3

- (c) to an adult dependant in respect of whom a claim for an increase of ¹carer's allowance is made or treated as made before 5th October 1998.
- ²(d) to an adult dependant who—
- (i) is a person in respect of whom a claim for an increase of carer's allowance is made;
 - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(a); and
 - (iii) has not previously been allocated a national insurance number.

¹Words substituted in reg. 2A(c), heading to Part II & reg. 3(1) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

²Reg. 2A(d) inserted by reg. 2 of S.I. 2009/471 as from 6.4.09.

PART II

MISCELLANEOUS PROVISIONS RELATING TO ¹CARER'S ALLOWANCE**Prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons**

3.—(1) For the purposes of ³section 70 of the Contributions and Benefits Act (¹carer's allowance) the prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons are—

- (a) a payment under ³section 104 of the Contributions and Benefits Act (increase of disablement pension where constant attendance needed);
- (b) a payment such as is referred to in section 7(3)(b) of the Industrial Injuries and Diseases (Old Cases) Act 1975(b) (increase of an allowance under that Act where the person in respect of whom that allowance is payable requires constant attendance as a result of his disablement);
- (c) a payment under regulation 44 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975(c) in respect of the need of constant attendance;
- (d) a payment by way of an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension,

³Words in reg. 3(1) substituted by reg. 2(3)(a) to (c) respectively of S.I. 1996/2744 as from 25.11.96.

being a payment the weekly rate of which is not less than the amount specified in ³paragraph 2(a) of Part V of Schedule 4 to the Contributions and Benefits Act.

(2) For the purposes of paragraph (1)(d) of this regulation “war disablement pension” means—

- (a) retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Ministry of Pensions Act 1916(d), the Air Force (Constitution) Act 1917(e), the Personal Injuries (Emergency Provisions) Act 1939(f), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(g), the Polish Resettlement Act 1947(h), the Home Guard Act 1951(i) or the Ulster Defence Regiment Act 1969(j),
- (b) any retired pay or pension to which section 365(l) of the Income and Corporation Taxes Act 1970(k) applies, not being retired pay, pension or allowance to which sub-paragraph (a) of this paragraph applies; or
- (c) any payment which the Secretary of State has certified can be accepted as being analogous to any such retired pay, pension or allowance as is referred to in sub-paragraph (a) or (b) of this paragraph.

(a) 1999 c. 33.

(b) 1975 c. 16.

(c) S.I. 1975/559 (1975 I, p. 1979).

(d) 1916 c. 65.

(e) 1917 c. 51.

(f) 1939 c. 82.

(g) 1939 c. 83.

(h) 1947 c. 19.

(i) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 8.

(j) 1969 c. 65.

(k) 1970 c. 10. [Any ref. to s. 365 of this Act is to be construed as including a ref. to s. 315 of the Income and Corporation Taxes Act 1988 (c. 1) by virtue of para. 21(3) of Sch. 30 *ibid.*]

Regs. 4-6**Circumstances in which persons are or are not to be treated as engaged or regularly and substantially engaged in caring for severely disabled persons**

¹Words in reg. 4(1), & reg. 4(1A) inserted by reg. 2(2) & 2(3) of S.I. 1993/1851 as from 17.8.93.

4.—(1) ¹Subject to paragraph (1A) of this regulation, ²a person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person on any day in a week unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours a week in caring for that severely disabled person.

¹(1A) A person who is caring for two or more severely disabled persons in a week shall be treated as engaged and regularly and substantially engaged in caring for a severely disabled person only where he is engaged and regularly engaged for at least 35 hours in that week in caring for any one severely disabled person, considered without reference to any other severely disabled person for whom he is caring. ²

(2) A week in respect of which a person fails to satisfy the requirements of paragraph (1) of this regulation shall be treated as a week in respect of which that person satisfies those requirements if he establishes—

- (a) that he has only temporarily ceased to satisfy them; and
- (b) that (disregarding the provisions of this sub-paragraph) he has satisfied them for at least 14 weeks in the period of 26 weeks ending with that week and would have satisfied them for at least 22 weeks in that period but for the fact that either he or the severely disabled person for whom he has been caring was undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Circumstances in which persons are to be regarded as receiving full-time education

²Reg. 5 substituted by reg. 2 of S.I. 1992/470 as from 6.4.92

³Words in reg. 5(1) substituted by reg. 2(4) of S.I. 1996/2744 as from 25.11.96.

²5.—(1) For the purposes of ³section 70(3) of the Contributions and Benefits Act ⁴, a person shall be treated as receiving full-time education for any period during which he attends a course of education at a university, college, school or other educational establishment for twenty-one hours or more a week.

(2) In calculating the hours of attendance under paragraph (1) of this regulation—

- (a) there shall be included the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course; and
- (b) there shall be excluded any time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment.

(3) In determining the duration of a period of full-time education under paragraph (1) of this regulation, a person who has started on a course of education shall be treated as attending it for the usual number of hours per week throughout any vacation or any temporary interruption of his attendance until the end of the course or such earlier date as he abandons it or is dismissed from it. ⁵

⁴Reg. 6 substituted by reg. 2 of S.I. 1981/655 as from 1.6.81.

⁵Words in heading and main body of reg. 6 substituted by reg. 2(5) of S.I. 1996/2744 as from 25.11.96.

⁶Words substituted in reg. 6, heading to reg. 7 by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

⁴Severely disabled persons prescribed for the purposes of ⁵section 70(1)(c) of the Contributions and Benefits Act ⁶

6. For the purposes of ⁵section 70(1)(c) of the Contributions and Benefits Act ⁶ (condition of entitlement to ⁶a carer's allowance ⁷ that the severely disabled person is either such relative of the person caring for him as may be prescribed or a person of any such other description as may be prescribed) where a severely disabled person is being cared for by another person, that disabled person shall be a prescribed person for the purposes of that section, whether he is related to the person caring for him or not. ⁸

Manner of electing the person entitled to ▶¹a carer’s allowance◀ in respect of a severely disabled person where, but for ▶²section 70(7) of the Contributions and Benefits Act◀, more than one person would be entitled to ▶¹a carer’s allowance◀ in respect of that severely disabled person

7.—(1) For the purposes of the provision in ▶²section 70(7) of the Contributions and Benefits Act◀ which provides that where, apart from that section, two or more persons would be entitled for the same day to ▶¹a carer’s allowance◀ in respect of the same severely disabled person one of them only shall be entitled, being such one of them as they may jointly elect in the prescribed manner, an election shall be made by giving the Secretary of State a notice in writing signed by the persons who but for the said provision would be entitled to ▶¹a carer’s allowance◀ in respect of the same severely disabled person specifying one of them as the person to be entitled.

(2) An election under paragraph (1) of this regulation shall not be effective to confer entitlement to ▶¹carer’s allowance◀ either for the day on which the election is made or for any earlier day if such day is one for which ▶¹a carer’s allowance◀ has been paid in respect of the severely disabled person in question and has not been repaid or recovered.

Circumstances in which a person is or is not to be treated as gainfully employed

8.—(1) For the purposes of ▶³section 70(1)(b) of the Contributions and Benefits Act◀ (condition of a person being entitled to ▶¹a carer’s allowance◀ for any day that he is not gainfully employed) a person shall not be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded ▶⁴£116◀ and, subject to paragraph (2) of this regulation, shall be treated as gainfully employed on every day in a week if his earnings in the immediately preceding week have exceeded ▶⁴£116◀.

(2) There shall be disregarded for the purposes of paragraph (1) above a person’s earnings—

- (a) for any week which under paragraph (2) of regulation 4 of these regulations is treated as a week in which that person satisfies the requirements of paragraph (1) of that regulation; ▶⁵◀
- (b) ▶⁶◀

For cases saved under reg. 3 of S.I. 1995/2935, reg. 8(2)(b) is reproduced as follows:—

- (b) for any week as an employed earner if that week is one throughout which he is absent from the employment by virtue of which he is an employed earner with the authority of his employer; and

- (c) ▶⁷◀

[Regulation 8(3) revoked by Sch. to S.I. 1978/1698 as from 1.1.79.]

Conditions relating to residence and presence in Great Britain

9.—(1) Subject to the following provisions of this regulation ▶⁸and regulations ▶⁹9A, 9B and 9C◀◀, the prescribed conditions for the purposes of ▶¹⁰section 70(4) of the Contributions and Benefits Act◀ (person not to be entitled to ▶¹a carer’s allowance◀ unless he satisfies prescribed conditions as to residence or presence in Great Britain) in relation to any person in respect of any day shall be—

- (a) that he is ▶⁸habitually◀ resident in ▶⁸the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands◀; and
- ▶¹¹(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a) or section 115 of that Act does not apply to him for the purposes of entitlement to ▶¹a carer’s allowance◀ by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and◀

¹Words substituted in heading to reg. 7 regs. 7(1), (2), 8(1) & 9(1) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

²Words in heading and reg. 7 substituted by reg. 2(6) of S.I. 1996/2744 as from 25.11.96.

³Words in reg. 8(1) substituted by reg. 2(7)(a) of S.I. 1996/2744 as from 25.11.96.

⁴Amounts in reg. 8(1) substituted by reg. 2 of S.I. 2017/386 as from 10.4.17.

⁵Word “and” deleted from reg. 8(2)(a) by reg. 2(7)(b) of S.I. 1996/2744 as from 25.11.96.

⁶Sub-para. (b) of reg. 8(2) deleted by reg. 2 of S.I. 1995/2935 as from 12.12.95, subj. to saving in reg. 3 *ibid.*

⁷Reg. 8(2)(c) deleted by reg. 2(7)(c) of S.I. 1996/2744 as from 25.11.96. (See saving provision in S.I. 1996/2744 page 3.4493.)

⁸Words inserted in reg. 9(1) & substituted in reg. 9(1)(a) by reg. 2(2)(a) & (b) of S.I. 2013/389 as from 8.4.13. (See reg. 1 for details of transitional provisions where there is an existing award on 7.4.13).

⁹Words substituted in reg. 9(1) by reg. 2(2) of S.I. 2017/1015 as from 16.11.17.

¹⁰Words in reg. 9(1) substituted by reg. 2(8)(a) of S.I. 1996/2744 as from 25.11.96

¹¹Reg. 9(1)(ia) substituted by reg. 8(2) of S.I. 2000/636 as from 3.4.00.

(a) 1999 c. 33.

Regs. 9-9A

- (b) that he is present in Great Britain; and
- (c) that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than ►¹104◀ weeks in the ►¹156 weeks◀ immediately preceding that day.

¹Words substituted in regs. 9(1)(c) & (3) & regs. 9A & 9B inserted by regs. 2(2)(d) & (3) of S.I. 2013/389 as from 8.4.13. (See reg. 1(5) for transitional provision affecting reg. 9(1)(c) where there is an existing award on 7.4.13).

²Reg. 9(1A) omitted by reg. 8(3) of S.I. 2000/636 as from 3.4.00.

³Reg. 9(2)(b) substituted by para. 9 of Sch. to S.I. 2013/388 as from 8.4.13.

⁴Word omitted in reg. 9(2)(b)(iii) & reg. 9(2)(b)(iiia) inserted by para. 2(2) of Sch. to S.I. 2013/591 as from 8.4.13.

(1A) ►²◀

(2) For the purposes of paragraph (1)(b) and (c) of this regulation, a person who is absent from Great Britain on any day shall be treated as being present in Great Britain—

- (a) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 4 weeks; or
- ³(b) if his absence is temporary and for the specific purpose of caring for the severely disabled person who is also absent from Great Britain and where any of the following is payable in respect of that disabled person for that day—
 - (i) attendance allowance;
 - (ii) the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act;
 - (iii) the daily living component of personal independence payment at the standard or enhanced rate prescribed in accordance with section 78(3) of the Welfare Reform Act 2012; ►⁴◀
 - ⁴(iiia) armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011; or◀
 - (iv) a payment specified in regulation 3(1) of these Regulations.◀

►¹(3) Notwithstanding that on any day a person is absent from Great Britain, he shall be treated as though he were—

- (a) habitually resident and present in Great Britain for the purposes of paragraphs (1)(a) to (c) if—
 - (i) his absence is by reason only of the fact that on that day he is abroad in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the Social Security (Contributions) Regulations 2001 (“the 2001 Regulations”); or
 - (ii) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person; and
- (b) present in Great Britain for the purposes of paragraph (1)(b) and (c) if his absence is by reason only of the fact that on that day he is—
 - (i) abroad in his capacity as an airman within the meaning of regulation 111 of the 2001 Regulations or a mariner within the meaning of regulation 115 of those Regulations; or
 - (ii) in prescribed employment(a) in connection with continental shelf operations within the meaning of regulation 114(1) of those Regulations.◀

►¹Persons residing in Great Britain to whom a relevant EU Regulation applies

9A.—(1) Regulation 9(1)(c) shall not apply where on any day—

- (a) the person is habitually resident in Great Britain;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(a) Employment which is prescribed under regulation 114(1) of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) is employment in any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (1964 c. 29), where the employment is in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998 (1998 c. 17).

(2) For the purposes of paragraph (1)(b) and regulation 9B, “relevant EU Regulation” has the meaning given by section 84(2) of the Welfare Reform Act 2012(a).

Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies

9B. Regulation 9(1)(a) to (c) shall not apply where on any day—

- (a) the person is habitually resident in—
 - (i) an EEA state other than the United Kingdom; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.◀

►¹**Refugees**

9C.—(1) Regulation 9(1)(c) shall not apply where the person has—

- (a) been granted refugee status or humanitarian protection under the immigration rules; or
- (b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

(2) For the purposes of this regulation “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971(b).◀

10. ►²◀

►³**Women aged 65 before 28th October 1994**

10A. A woman shall be entitled to ►⁴a carer’s allowance◀ if—

- (a) she attained the age of 65 before 28th October 1994;
- (b) immediately before attaining the age of 65 she would have satisfied the requirements for entitlement to ►⁴a carer’s allowance◀, whether or not she made a claim, but for the condition, which applied prior to 28th October 1994, in section 70(5) of the Contributions and Benefits Act(c) (exclusion of persons who had attained pensionable age and had not been entitled to that allowance immediately before attaining that age); and
- (c) she satisfies the requirements for entitlement to ►⁴a carer’s allowance◀ apart from the conditions in section 70(1)(a) and (b) ►²◀ of the Contributions and Benefits Act.◀

11. ►²◀

►⁵**Men aged 65 before 28th October 1994**

11A. A man who—

- (a) attained the age of 65 before 28th October 1994; and
- (b) was entitled to ►⁴a carer’s allowance◀ immediately before he attained that age,

shall be entitled to that allowance notwithstanding that, after he attained that age, he was not caring for a severely disabled person or no longer satisfied the requirements of section 70(1)(a) or (b) of the Contributions and Benefits Act, if he satisfies the other requirements for entitlement to that allowance(d).◀

(a) 2012 c. 5.

(b) 1971 c. 77.

(c) See S.I. 1994/2556, regulation 2 which substituted “the age of 65” for “pensionable age” in section 70 with effect from 28th October 1994.

(d) See S.I. 1994/2556, which substituted “the age of 65” for “retiring age” in section 70, with effect from 28th October 1994.

¹Reg. 9C inserted by reg. 2(3) of S.I. 2017/1015 as from 16.11.17.

²Regs. 10 & 11 revoked & words in reg. 10A(c) omitted by reg. 2 of S.I. 2002/2499 as from 28.10.02.

³Reg. 10A inserted by reg. 5(4) of S.I. 1994/2556 as from 28.10.94

⁴Words substituted in regs. 10A, 11A(b), by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

⁵Reg. 11A inserted by reg. 5(6) of S.I. 1994/2556 as from 28.10.94.

Regs. 12-21

[Regulations 12 and 13 revoked by regulation 16 of and Schedule 3 to S.I. 1977/343 as from 4.4.77.]

¹Words in heading to and text of reg. 14 substituted by reg. 8(2) of S.I. 1995/829 as from 13.4.95.

²Words substituted in heading to and text of reg. 14 by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

Application of the Social Security (General Benefit) Regulations ►¹1982(a)◄ to ►²carer's allowance◄

14. The provisions of ►¹the Social Security (General Benefit) Regulations 1982◄, specified in column (1) of Schedule 1 to these regulations, the subject matter of which is described in column (2) of that Schedule, shall, with any necessary modifications, apply to ►²carer's allowance◄ as they apply to ►¹incapacity benefit◄.

PART III

CONSEQUENTIAL AMENDMENTS OF REGULATIONS

[Regulation 15 revoked by regulation 18 of and Schedule 2 to S.I. 1979/597 as from 29.6.79.]

[Regulation 16 revoked by regulation 94 of, and Schedule 5 to S.I. 1984/451 as from 23.4.84.]

[Regulation 17 revoked by regulation 32 of and Schedule 5 to S.I. 1979/628 as from 9.7.79.]

[Regulation 18 revoked by regulation 5 of S.I. 1978/393 as from 6.4.79.]

[Regulation 19 adds regulation 7A to S.I. 1975/556.]

[Regulation 20 adds regulation 10B to S.I. 1975/563.]

[Regulation 21 revoked by regulation 18 of and Schedule 2 to S.I. 1979/642 as from 10.7.79.]

15th March 1976

Barbara Castle
Secretary of State for Social Services

(a) S.I. 1982/1408.

Schs. 1-2

►¹SCHEDULE 1

Regulation 14

PROVISIONS OF THE SOCIAL SECURITY (GENERAL BENEFIT) REGULATIONS 1982 APPLIED TO ►²CARER'S ALLOWANCE◄

¹Sch. 1 substituted by reg. 8(3) of S.I. 1995/829 as from 13.4.95.

²Words in title to Sch. 1 & in explanatory note substituted by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

<i>Regulation applied</i>	<i>Subject matter</i>
(1)	(2)
2	Exceptions from disqualification for imprisonment etc.
3	Suspension of payment of benefit during imprisonment etc.
4	Interim payments by way of benefit under the Act
9	Payment of benefit and suspension of payments pending a decision on appeals or references, arrears and repayments◄

[Schedule 2 revoked by regulation 5 of S.I. 1978/393 as from 6.4.79.]

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations contain provisions relating to ►¹carer's allowance◄ under section 37 of the Social Security Act 1975.

Part I of the Regulations relates to their citation, commencement and interpretation; Part II contains miscellaneous provisions relating to the allowance and applies to the allowance the provisions of the Social Security (General Benefit) Regulations 1974 set out in Schedule 1 to the Regulations; and Part III, together with Schedule 2 to the Regulations, relates to consequential amendments of other Social Security Regulations. The Regulations contain an "Arrangement of Regulations" (see pages 1 and 2)

The Report of the National Insurance Advisory Committee dated 9th March 1976 on the draft of these Regulations referred to them is contained in House of Commons Paper No. 271 (Sessions 1975-76) published by Her Majesty's Stationery Office.

