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STATUTORY INSTRUMENTS

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**1991 No. 2740**

**SOCIAL SECURITY**

**The Social Security (Attendance Allowance) Regulations 1991**

*Made* - - - - *5th December 1991*

*Laid before Parliament* *5th December 1991*

*Coming into force* - - *6th April 1992*

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 35(1), (2)(b), (2A), (4A) and (6), 85(1)(b) and 166(2) and (3) of, and Schedule 20 to, the Social Security Act 1975(1) and of all other powers enabling him in that behalf, by this instrument, which contains regulations which relate to matters which, in accordance with section 140 of that Act, have been referred to the Attendance Allowance Board(2), hereby makes the following Regulations:

**Citation, commencement and interpretation**

**1. –**

(1) These Regulations may be cited as the Social Security (Attendance Allowance) Regulations 1991 and shall come into force on 6th April 1992.

(2) In these Regulations–

“the Act” means the Social Security Act 1975;

“the NHS Act of 1977” means the National Health Service Act 1977(3);

“the NHS Act of 1978” means the National Health Service (Scotland) Act 1978(4);

“the NHS Act of 1990” means the National Health Service and Community Care Act 1990(5);

“terminally ill” shall be construed in accordance with section 35(2C) of the Act(6).

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

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(1) 1975 c. 14. Section 35(1) was amended by section 2(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21) (“the 1991 Act”). Subsection (2) was amended by section 2(2) of the Social Security Act 1979 (c. 18) (“the 1979 Act”) and section 10 of and Schedule 4 to the 1979 Act. Subsection (2A) was inserted by section 2(3) and (6) of the 1979 Act. Subsection (4A) was inserted by paragraph 8 of Schedule 1 to the Social Security Act 1980 (c. 30). Schedule 20 is cited for the meaning it ascribes to the words “prescribed” and “regulations”.

(2) See the Social Security Act 1980 (c. 30), section 10 and paragraph 12(3) of Schedule 3.

(3) 1977 c. 49.

(4) 1978 c. 29.

(5) 1990 c. 19.

(6) Section 35(2C) was inserted by section 1(1) of the Social Security Act 1990 (c. 27).

## Conditions as to residence and presence in Great Britain

### 2. –

(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 35(1) of the Act as to residence and presence in Great Britain in relation to any person on any day shall be that–

- (a) on that day–
  - (i) he is ordinarily resident in Great Britain, and
  - (ii) he is present in Great Britain, and
  - (iii) he has been present in Great Britain for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; and
- (b) where that day falls within a period in which that person–
  - (i) receives tax free emoluments, or
  - (ii) is the spouse of a person who receives tax free emoluments,
 that period is immediately preceded by a period of 4 years during which the person first mentioned in this sub-paragraph was present in Great Britain for not less than 156 weeks in aggregate.

(2) For the purposes of paragraph (1)(a)(ii) and (iii), notwithstanding that on any day a person is absent from Great Britain, he shall be treated as though he were present in Great Britain if his absence is by reason only of the fact that on that day–

- (a) he is abroad in his capacity as–
  - (i) a serving member of the forces,
  - (ii) an airman or mariner within the meaning of regulations 81 and 86 respectively of the Social Security (Contributions) Regulations 1979(7),
 and for the purpose of this provision, the expression “serving members of the forces” has the same meaning as in regulation 1(2) of the Regulations of 1979; or
- (b) he is in employment prescribed for the purposes of section 132 of the Act in connection with continental shelf operations(8); or
- (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person; or
- (d) his absence from Great Britain is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or
- (e) his absence from Great Britain is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Great Britain, and the Secretary of State has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Great Britain.

(3) Where a person is terminally ill and makes a claim for attendance allowance expressly on the ground that he is such a person, paragraph (1) shall apply to him as if head (iii) of sub-paragraph (a) was omitted.

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(7) S.I. 1979/591; the relevant amending instruments are S.I. 1980/1975 and S.I. 1982/1738.

(8) Section 132 was amended by paragraph 21 of Schedule 3 to the Oil and Gas Enterprise Act 1982 (c. 23). See also regulation 85 of the Social Security (Contributions) Regulations 1979/591.

(4) In paragraph (1)(b), the expression “tax free emoluments” means emoluments which are exempt from tax under any of the provisions listed in paragraph (1) of regulation 9 of the Child Benefit (General) Regulations 1976<sup>(9)</sup>.

#### **Extension of qualifying period**

3. The period prescribed for the purposes of section 35(2)(b) of the Act (claimant to satisfy one or both of the conditions in section 35(1) of the Act for 6 months immediately preceding the date from which attendance allowance is to be awarded) shall be 2 years.

#### **Allowance payable before the date of claim in renewal cases**

4. Where—

- (a) a person has been entitled to an attendance allowance or the care component of a disability living allowance; and
- (b) the period for which either allowance has been paid has ended; and
- (c) a claim for an attendance allowance has been made or treated as made within 6 months from the end of the period referred to in paragraph (b),

an attendance allowance may be paid before the date of claim if the claimant has satisfied the condition mentioned in paragraph (a) of subsection (1) of section 35 of the Act or the condition mentioned in paragraph (b) of that subsection or both of those conditions from the date on which the period referred to in paragraph (b) has ended until the date of claim.

#### **Renal dialysis**

5. —

(1) Subject to paragraph (3), a person who suffers from renal failure and who is undergoing the treatment specified in paragraph (2) shall be deemed to satisfy the conditions—

- (a) in section 35(1)(a) of the Act (severe physical and mental disability) if he undergoes renal dialysis by day;
- (b) in section 35(1)(b) of the Act if he undergoes renal dialysis by night;
- (c) in either paragraph (a) or paragraph (b) of section 35(1) of the Act, but not both, if he undergoes renal dialysis by day and by night.

(2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—

- (a) two or more times a week; and
- (b) which either—
  - (i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or
  - (ii) which, because of the particular circumstances of his case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the person undergoing renal dialysis or to supervise that person in order that he avoids substantial danger to himself.

(3) Except as provided in paragraph (4), paragraph (1) does not apply to a person undergoing the treatment specified in paragraph (2) where the treatment—

- (a) is provided under the NHS Act of 1977 or the NHS Act of 1978;
- (b) is in a hospital or similar institution;

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<sup>(9)</sup> S.I. 1976/965.

- (c) is out-patient treatment; and
- (d) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.

(4) Paragraph (3) does not apply for the purposes of determining whether a person is to be taken to satisfy either of the conditions specified in paragraph (1) during the period of 6 months referred to in section 35(2)(b) of the 1975 Act (qualifying period for attendance allowance).

## **Hospitalisation**

### **6. –**

(1) Subject to regulation 8, it shall be a condition for the receipt of an attendance allowance for any period in respect of any person that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

- (a) in a health service hospital within the meaning of the NHS Act of 1977 or the NHS Act of 1978; or
- (b) in a hospital or similar institution in pursuance of arrangements made, or having effect as if made, by the Secretary of State, or any body in the exercise of functions on behalf of the Secretary of State under either of those Acts; or
- (c) in a hospital or similar institution maintained or administered by the Defence Council or a National Health Service trust; or
- (d) in a hospital or similar institution in pursuance of arrangements made by a member of a recognised fund-holding practice.

(2) For the purposes of paragraph (1), a person shall only be regarded as not being maintained free of charge in a hospital or similar institution for any period where his accommodation and services are provided under section 65 of the NHS Act of 1977 or section 58 of, or paragraph 14 of Schedule 7A to, the NHS Act of 1978 or paragraph 14 of Schedule 2 to the NHS Act of 1990.

(3) In this regulation—

- “National Health Service trust” has the meaning assigned by section 5 of the NHS Act of 1990;
- “recognised fund-holding practice” shall be construed in accordance with section 14 of the NHS Act of 1990.

## **Persons in certain accommodation other than hospitals**

### **7. –**

(1) Except in the cases specified in paragraphs (2), (3) and (4) and subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a person for whom accommodation is provided—

- (a) in pursuance of—
  - (i) Part III of the National Assistance Act 1948<sup>(10)</sup> or paragraph 2 of Schedule 8 to the NHS Act of 1977, or
  - (ii) Part IV of the Social Work (Scotland) Act 1968<sup>(11)</sup> or section 7 of the Mental Health (Scotland) Act 1984<sup>(12)</sup>;

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<sup>(10)</sup> 1948 c. 29.

<sup>(11)</sup> 1968 c. 49.

<sup>(12)</sup> 1984 c. 36.

- (b) in circumstances where the cost of the accommodation is 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 education or training; or
  - (c) in circumstances where the cost of the accommodation 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 education or training.
- (2) Paragraph (1)(c) shall not apply in the case of a person who is terminally ill where the Secretary of State has been informed of that fact—
- (a) on a claim for an attendance allowance;
  - (b) on an application for review of an award of attendance allowance; or
  - (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, attendance allowance.
- (3) Paragraph (1)(c) shall also not apply—
- (a) where he is a person for whom accommodation is made available for his occupation in accordance with section 65 of the Housing Act 1985<sup>(13)</sup> (duties of local housing authorities to persons found to be homeless);
  - (b) where the person himself pays the whole cost, and always has paid the whole cost, of the accommodation;
  - (c) except in a case to which paragraph (4) applies, where the accommodation the person is living in is a private dwelling.
- (4) This paragraph applies where—
- (a) the cost of the accommodation the person previously occupied was borne in whole or in part out of public or local funds and where he was moved out of that accommodation at the instigation of the body which bore the cost into a residential care home; or
  - (b) the person is living in a residential care home and at least 4 other persons in that house are provided with board and personal care, excluding persons carrying on the home or employed there or their relatives,
- and in this paragraph “residential care home” means an establishment in respect of which registration is required under Part I of the Registered Homes Act 1984<sup>(14)</sup> or would be so required but for section 1(4) of that Act.
- (5) In this regulation, references to the cost of the accommodation shall not include the cost of—
- (a) domiciliary services provided in respect of a person in a private dwelling; or
  - (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
  - (c) improvements made to, or furniture or equipment provided for, residential homes or other homes or premises in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature; or
  - (d) social and recreational activities provided outside the accommodation in respect of which grants or payments are made out of public or local funds; or
  - (e) the purchase or running of a motor vehicle to be used in connection with the accommodation in respect of which grants or payments are made out of public or local funds.

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<sup>(13)</sup> 1985 c. 68.

<sup>(14)</sup> 1984 c. 23.

### **Exemption from regulations 6 and 7**

**8.** –

(1) Regulation 6, or as the case may be, regulation 7, shall not, subject to paragraph (3), apply to a person in respect of the first 28 days of any period during which he is–

- (a) undergoing medical or other treatment in a hospital or other institution in any of the circumstances mentioned in regulation 6; or
- (b) in accommodation provided in any of the circumstances mentioned in regulation 7.

(2) For the purposes of paragraph (1)–

- (a) two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period;
- (b) any period or periods to which either regulation 6 or regulation 7 refers shall be taken into account and aggregated with any period to which the other of them refers.

(3) Where, on the day a person's entitlement to an attendance allowance commences, he is in accommodation in the circumstances mentioned in regulation 6 or regulation 7, paragraph (1) shall not apply to him for any period of consecutive days, beginning with that day, on which he remains in that accommodation.

### **Revocation**

**9.** The Social Security (Attendance Allowance) (No. 2) Regulations 1975(15) are hereby revoked.

Signed by authority of the Secretary of State for Social Security.

5th December 1991

*Nicholas Scott*  
Minister of State,  
Department of Social Security

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace with amendments the Social Security (Attendance Allowance) (No. 2) Regulations 1975 (S.I.1975/598) and are consequential upon the changes made to attendance allowance by section 2(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 which provides in particular that a person shall not be entitled to an attendance allowance unless he is aged 65 or over.

Regulation 1 contains provisions relating to citation, commencement and interpretation.

Regulation 2 sets out the conditions as to residence and presence in Great Britain which a person must satisfy to qualify for an attendance allowance.

Regulation 3 specifies when the qualifying period provided for in section 35(2)(b) of the Social Security Act 1975 may occur when entitlement to an attendance allowance has been interrupted and regulation 4 enables an attendance allowance to be paid before the date of claim in renewal cases.

Regulation 5 relates specifically to persons undergoing renal dialysis and provides that in certain circumstances such persons shall be entitled to an attendance allowance.

Regulations 6, 7 and 8 impose restrictions on the payment of benefit where a person is accommodated in hospital or is in certain accommodation where the cost is or may be met out of public or local funds.

Regulation 9 revokes the Social Security (Attendance Allowance) (No. 2) Regulations 1975.