
STATUTORY INSTRUMENTS

1991 No. 2890

SOCIAL SECURITY

**The Social Security (Disability
Living Allowance) Regulations 1991**

Made - - - - *18th December 1991*

Coming into force - - *6th April 1992*

Whereas a draft of this instrument was laid before Parliament in accordance with section 12(1) of the Disability Living Allowance and Disability Working Allowance Act 1991⁽¹⁾ and approved by resolution of each House of Parliament;

Now therefore the Secretary of State for Social Security, in exercise of the powers conferred by sections 37ZA(6), 37ZB(2), (3), (7) and (8), 37ZC, 37ZD, 37ZE(2), 85(1), 114(1) and 166(2) to (3A) of and Schedule 20 to the Social Security Act 1975⁽²⁾, section 13 of the Social Security (Miscellaneous Provisions) Act 1977⁽³⁾ and section 5(1) of the Disability Living Allowance and Disability Working Allowance Act 1991, and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made consequential upon section 1 of the Disability Living Allowance and Disability Working Allowance Act 1991, hereby makes the following Regulations:

PART I

INTRODUCTION

Citation, commencement and interpretation

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

(2) In these Regulations—

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- (1) 1991 c. 21.
(2) 1975 c. 14. Sections 37ZA–37ZE were inserted in the Social Security Act 1975, by the Disability Living Allowance and Disability Working Allowance Act 1991; section 166 was amended by the Social Security Act 1989 (c. 24) Schedule 8, paragraph 10(1); subsection (3A) was inserted in section 166 by the Social Security Act 1986 (c. 50), section 62(1); Schedule 20 is cited because of the meaning it ascribes to the words “Prescribed” and “Regulations”, and for the enabling power contained within the meaning of the word “Child”, which was inserted by the Child Benefit Act 1975 (c. 61), Schedule 4, paragraph 38.
(3) 1977 c. 5; section 13 was amended by the Social Security Act 1979 (c. 18) Schedule 3, paragraph 29(c) and the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), section 4, Schedule 2, paragraph 8.

“the Act” means the Social Security Act 1975(4);

“the NHS Act of 1977” means the National Health Service Act 1977(5);

“the NHS Act of 1978” means the National Health Service (Scotland) Act 1978(6);

“the NHS Act of 1990” means the National Health Service and Community Care Act 1990(7);

“adjudicating authority” means, as the case may be, the chief or any other adjudication officer, an appeal tribunal or a disability appeal tribunal;

“care component” means the care component of a disability living allowance;

“mobility component” means the mobility component of a disability living allowance;

“terminally ill” shall be construed in accordance with section 35(2C) of the 1975 Act(8).

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

PART II GENERAL

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 37ZA(6) 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, or
 - (iii) is aged under 16 and is the son, daughter, step-son or step-daughter 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 was 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—

(4) 1975 c. 14.

(5) 1977 c. 49.

(6) 1978 c. 29.

(7) 1990 c. 19.

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

- (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⁽⁹⁾,
- 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⁽¹⁰⁾; 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) 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⁽¹¹⁾.
- (4) Where a person is terminally ill and—
- (a) makes a claim for disability living allowance; or
 - (b) an application is made for a review of his award of disability living 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.
- (5) Paragraph (1) shall apply in the case of a child under the age of 6 months as if in head *(iii) of sub-paragraph (a) for the reference to 26 weeks there was substituted a reference to 13 weeks.
- (6) Where in any particular case a child has by virtue of paragraph (5), entitlement to the care component immediately before the day he attains the age of 6 months, then until the child attains the age of 12 months, head (iii) of sub-paragraph (a) of paragraph (1) shall continue to apply in his case as if for the reference to 26 weeks there was substituted a reference to 13 weeks.

Age 65 or over

- 3.—(1) A person shall not be precluded from entitlement to either component of disability living allowance by reason only that he has attained the age of 65 years, where—
- (a) disability living allowance is claimed for a period beginning on or after the day the person attains the age of 65 but before he attains the age of 66;
 - (b) on the day before he attained the age of 65 he satisfied the conditions as to residence and presence in Great Britain set out in regulation 2;
 - (c) on that day, he satisfied the conditions of entitlement in section 37ZB(1) or as the case may be, section 37ZC(1) of the Act; and

⁽⁹⁾ S.I. 1979/591; the relevant amending instruments are S.I. 1980/1975, S.I. 1982/1738.

⁽¹⁰⁾ Seeregulation 85 of the Social Security (Contributions) Regulations 1979; section 132 was amended by the Oil and Gas Enterprise Act 1982 (c. 23) schedule 3, paragraph 21.

⁽¹¹⁾ S.I. 1976/965.

(d) he has satisfied those conditions throughout the period beginning on that day and ending with the day on which the claim is made.

(2) Paragraph (3) applies to a person who—

(a) made a claim for disability living allowance before he attained the age of 65, which was not determined before he attained that age, and

(b) did not at the time he made the claim have an award of disability living allowance for a period ending on or after the day he attained the age of 65.

(3) In determining the claim of a person to whom this paragraph applies, where the person otherwise satisfies the conditions of entitlement to either or both components of disability living allowance for a period commencing before his 65th birthday (other than the requirements of section 37ZB(2)(a), or, as the case may be, section 37ZC(9)(a) of the Act (3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.

(4) Schedule 1, which makes further provision for persons aged 65 or over shall have effect.

Rate of Benefit

4.—(1) The three weekly rates of the care component are—

(a) the highest rate, payable in accordance with section 37ZB(4)(a) of the Act, £43.35;

(b) the middle rate, payable in accordance with section 37ZB(4)(b) of the Act, £28.95; and

(c) the lowest rate, payable in accordance with section 37ZB(4)(c) of the Act, £11.55.

(2) The two weekly rates of the mobility component are—

(a) the higher rate, payable in accordance with section 37ZC(11)(a) of the Act, £30.30; and

(b) the lower rate, payable in accordance with section 37ZC(11)(b) of the Act, £11.55.

Late claim by a person previously entitled

5.—(1) Notwithstanding section 37ZE(1) of the Act (no entitlement to disability living allowance for any day before a claim is made), where—

(a) a person's entitlement to disability living allowance has ended, and

(b) that person makes or is treated as making a claim for disability living allowance after the entitlement has ended but within a period of 6 months immediately following the day on which it ended,

then the person shall, subject to satisfying any other conditions of entitlement, be entitled to the care component for any day on or after 6th April 1992 on which he satisfies the conditions specified in paragraph (2)(a) and to the mobility component for any day on or after that day on which he satisfies the conditions specified in paragraph (2)(b).

(2) Those conditions are—

(a) where the person is entitled on the claim for disability living allowance to the care component, that—

(i) the previous entitlement was to the care component,

(ii) that entitlement ended within 6 months of the claim being made,

(iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day the claim was made, he satisfied the conditions of entitlement to the care component specified in paragraph (a), (b) or (c) of subsection (1) of section 37ZB of the Act; and

- (iv) the day in question falls within that period,
- (b) where he is entitled on the claim for disability living allowance to the mobility component, that—
 - (i) the previous entitlement was to the mobility component,
 - (ii) that entitlement ended within 6 months of the claim being made,
 - (iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day the claim was made he satisfied the conditions of entitlement to the mobility component specified in paragraph (a), (b), (c) or (d) of subsection (1) of section 37ZC of the Act, and
 - (iv) the day in question falls within that period.
- (3) Where a person has been entitled for any period before 6th April 1992 to attendance allowance or mobility allowance, then—
 - (a) the reference in paragraph (1)(a) to entitlement to disability living allowance includes also a reference to entitlement to attendance allowance or mobility allowance; and
 - (b) the reference in paragraph (2)(a)(i) to entitlement to the care component includes also a reference to entitlement to attendance allowance and the reference in paragraph (2)(b)(i) to entitlement to the mobility component includes also a reference to entitlement to mobility allowance.

PART III

CARE COMPONENT

Qualifying period for care component after an interval

6.—(1) The period prescribed for the purposes of section 37ZB(2)(a)(ii) of the Act is a period of 3 months ending on the day on which the person was last entitled to the care component or to attendance allowance where that day falls not more than 2 years before the date on which entitlement to the care component would begin, or would have begun but for any regulations made under section 51(1)(m) of the 1986 Act (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

(2) Except in a case to which paragraph (3) applies, this regulation shall apply to a person to whom paragraph 3 or 7 of Schedule 1 refers as if for the reference to 3 months there was substituted a reference to 6 months.

(3) Paragraph (1) and not paragraph (2), shall apply to those persons referred to in paragraph (2) who, on the day before they attained the age of 65, had already completed the period of 3 months referred to in paragraph (1).

(4) For the purposes of paragraph (3), the modification made in Schedule 1—

(a) in paragraph 3(2) and 7(2), to section 37ZB(2)(a) of the Act, and

(b) in paragraph 5(2), to section 37ZC(9)(a) of the Act,

shall be treated as not having been made.

Renal Dialysis

7.—(1) A person who suffers from renal failure and falls within the provisions in paragraph (2) shall be taken to satisfy—

- (a) where he undergoes renal dialysis by day, the conditions in paragraph (b) of subsection (1) of section 37ZB of the Act (severe physical or mental disability);
 - (b) where he undergoes renal dialysis by night, the conditions in paragraph (c) of that subsection; or
 - (c) where he undergoes renal dialysis by day and by night, the conditions in either paragraph (b) or paragraph (c) of subsection (1), but not both.
- (2) Subject to paragraph (3), a person falls within this paragraph—
- (a) if—
 - (i) he undergoes renal dialysis two or more times a week; and
 - (ii) the renal dialysis he undergoes is of a type which normally requires the attendance or supervision of another person during the period of the dialysis; or
 - (iii) because of the particular circumstances of his case he in fact requires another person, during the period of the dialysis, to attend in connection with his bodily functions or to supervise him in order to avoid substantial danger to himself; and
 - (b) if, where he undergoes dialysis as an out-patient in a hospital or similar institution, being treatment provided under the NHS Act of 1977 or the NHS Act of 1978, no member of the staff of the hospital or institution assists with or supervises the dialysis.

(3) Paragraph (2)(b) does not apply for the purpose of determining whether a person is to be taken to satisfy any of the conditions mentioned in paragraph (1) during the period of 3 months referred to in section 37ZB(2)(a)(i) of the Act (qualifying period for a care component).

(4) Except to the extent that provision is made in paragraph (2)(b), a person who undergoes treatment by way of renal dialysis as an out-patient in a hospital or similar institution, being treatment provided under the NHS Act of 1977 or the NHS Act of 1978, shall not be taken solely by reason of the fact that he undergoes such dialysis, as satisfying any of the conditions mentioned in subsection (1)(a) to (c) of section 37ZB of the Act.

Hospitalisation

8.—(1) Subject to regulation 10, it shall be a condition for the receipt of a disability living allowance which is attributable to entitlement to the care component 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 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, in a hospital or similar institution; 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 during any period when 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 to it by 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

9.—(1) Except in the cases specified in paragraph (2) and, for the purposes of sub-paragraph (c) below, paragraphs (3) to (5), and subject to regulation 10, 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 any period where throughout that period he is a person for whom accommodation is provided—

- (a) in pursuance—
 - (i) of Part III of the National Assistance Act 1948⁽¹²⁾ or paragraph 2 of Schedule 8 to the NHS Act of 1977; or
 - (ii) of Part IV of the Social Work (Scotland) Act 1968⁽¹³⁾ or section 7 of the Mental Health (Scotland) Act 1984;⁽¹⁴⁾
- (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 young persons 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 young persons or to education or training.

(2) Paragraph (1) shall not apply in the case of a child—

- (a) who has not attained the age of 16 and is being looked after by a local authority, or,
- (b) who has not attained the age of 18 and to whom—
 - (i) section 17(10)(b) of the Children Act 1989⁽¹⁵⁾ (impairment of health and development) applies because his health is likely to be significantly impaired, or further impaired, without the provision of services for him, or
 - (ii) section 17(10)(c) of the Act of 1989 (disability) applies,during any period during which the local authority looking after the child place him in a private dwelling with a family, or a relative of his, or some other suitable person; or
- (c) who is accommodated outside the United Kingdom and the cost of the accommodation is or may be borne wholly or partly by a local authority pursuant to their powers under section 3A of the Education Act 1981.⁽¹⁶⁾

(3) 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 the care component,
- (b) on an application for a review of an award of disability living 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, disability living allowance.

(4) Paragraph (1)(c) shall also not apply—

- (a) where the person is living in accommodation as a privately fostered child;

⁽¹²⁾ 1948 c. 29.

⁽¹³⁾ 1968 c. 49.

⁽¹⁴⁾ 1984 c. 36.

⁽¹⁵⁾ 1989 c. 41.

⁽¹⁶⁾ 1981 c. 60; section 3A was inserted by the Children Act 1989, Schedule 12, paragraph 26.

- (b) where he is a person for whom accommodation is made available for his occupation in accordance with section 65 of the Housing Act 1985⁽¹⁷⁾(duties of local housing authorities to persons found to be homeless);
 - (c) where the person himself pays the whole cost, and always has paid the whole cost, of the accommodation;
 - (d) except in a case to which paragraph (5) applies, where the accommodation the person is living in is a private dwelling.
- (5) 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 home are provided with board and personal care, excluding persons carrying on the home or employed there or their relatives.
- (6) 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.
- (7) In paragraph (4) the expression—
- “privately fostered child” has the meaning it bears in Part IV of the Children Act 1989⁽¹⁸⁾by virtue of section 66(1) of that Act.
- “residential care home” means an establishment in respect of which registration is required under Part I of the Registered Homes Act 1984⁽¹⁹⁾ or would be so required but for section 1(4) of that Act.

Exemption from regulation 8 and 9

10.—(1) Regulation 8, or as the case may be, regulation 9, shall not, subject to paragraphs (2) and (3), apply to a person for the first 28 days of any period throughout which he is someone to whom paragraph (4) applies.

(2) Regulation 8 shall not, subject to paragraph (3), apply to a person who has not attained the age of 16 for the first 84 days of any period throughout which he is someone to whom paragraph (4) refers.

(3) Where on the day the person’s entitlement to the care component commenced, he is a person to whom paragraph (4) refers, then paragraph (1) or, as the case may be, paragraph (2) shall not

⁽¹⁷⁾ 1985 c. 68.

⁽¹⁸⁾ 1989 c. 41.

⁽¹⁹⁾ 1984 c. 23.

apply to him for any period of consecutive days, beginning with that day, in which he continues to be a person to whom paragraph (4) refers.

- (4) This paragraph refers to a person who—
 - (a) is undergoing medical or other treatment in a hospital or other institution in any of the circumstances mentioned in regulation 8; or
 - (b) is in accommodation provided in any of the circumstances mentioned in regulation 9.
- (5) For the purposes of paragraphs (1) and (2)—
 - (a) 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 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 regulation 8(1) or 9(1) refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

MOBILITY COMPONENT

Qualifying period for mobility component after an interval

11. The period prescribed for the purposes of section 37ZC(9)(a)(ii) of the Act is a period of 3 months ending on the day on which the person was last entitled to the mobility component or to mobility allowance, where that day falls not more than 2 years before the date on which entitlement to the mobility component would begin or would have begun but for any regulations made under section 51(1)(m) of the 1986 Act (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

Entitlement to the mobility component

12.—(1) A person is to be taken to satisfy the conditions mentioned in section 37ZC(1)(a) of the Act (unable or virtually unable to walk) only in the following circumstances—

- (a) his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to the place of residence or as to place of, or nature of, employment—
 - (i) he is unable to walk; or
 - (ii) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or
 - (iii) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or
 - (b) he has both legs amputated at levels which are either through or above the ankle, or he has one leg so amputated and is without the other leg, or is without both legs to the same extent as if it, or they, had been so amputated.
- (2) For the purposes of section 37ZC(2)(a) of the Act (mobility component for the blind and deaf) a person is to be taken to satisfy—
- (a) the condition that he is blind only where the degree of disablement resulting from the loss of vision amounts to 100 per cent; and

- (b) the condition that he is deaf only where the degree of disablement resulting from loss of hearing amounts to not less than 80 per cent on a scale where 100 per cent represents absolute deafness.
- (3) For the purposes of section 37ZC(2)(b) of the Act, the conditions are that by reason of the combined effects of the person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.
- (4) Except in a case to which paragraph (1)(b) applies, a person is to be taken not to satisfy the conditions mentioned in section 37ZC(1)(a) of the Act if he—
 - (a) is not unable or virtually unable to walk with a prosthesis or artificial aid which he habitually wears or uses, or
 - (b) would not be unable or virtually unable to walk if he wore or used a prosthesis or an artificial aid which is suitable in his case.
- (5) A person falls within subsection (3)(a) of section 37ZC of the Act (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.
- (6) A person falls within subsection (3)(b) of section 37ZC of the Act (severe behavioural problems) if he exhibits disruptive behaviour which—
 - (a) is extreme,
 - (b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and
 - (c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.

Invalid Vehicle Scheme

13. Schedule 2, which relates to the entitlement to mobility component of certain persons eligible for invalid carriages shall have effect.

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

18th December 1991

Nicholas Scott
Minister of State,
Department of Social Security

SCHEDULE 1

Regulation 3(4)

PERSONS AGED 65 AND OVER

Review of an award made before person attained 65

1.—(1) This paragraph applies where—

- (a) a person is aged 65 or over;
- (b) the person has an award of disability living allowance made before he attained the age of 65;
- (c) an application in writing is made in accordance with section 100A(6) or 104A(3) of the Act for that award to be reviewed; and
- (d) an adjudicating authority is satisfied that the decision awarding disability living allowance ought to be both reviewed and revised.

(2) Where paragraph (1) applies, the person to whom the award relates shall not, subject to paragraph (3), be precluded from entitlement to either component of disability living allowance solely by reason of the fact that he is aged 65 or over when the revised award is made.

(3) Where the adjudicating authority determining the application for review is satisfied that the decision ought to be reviewed on the ground that there has been a relevant change of circumstances since the decision was given, paragraph (2) shall apply only where the relevant change of circumstances occurred before the person attained the age of 65.

Reviews of an award other than a review to which paragraph 1 refers

2. References in the following paragraphs of this Schedule to a review of an award refer only to those reviews where the awards which are being reviewed were made—

- (a) on or after the date the person to whom the award relates attained the age of 65; or
- (b) before the person to whom the award relates attained the age of 65 where the award is reviewed and revised by reference to a change in the person's circumstances which occurred on or after the day he attained the age of 65.

Age 65 and over and entitled to the care component

3.—(1) This paragraph applies where a person on or after attaining the age of 65—

- (a) is entitled to the care component and an adjudicating authority is satisfied that the decision awarding it ought to be revised on a review under section 100A, 100B or 104A of the Act; or
- (b) makes a renewal claim for disability living allowance.

(2) Where a person was entitled on the previous award or on the award under review to the care component payable—

- (a) at the lowest rate, that person shall not be precluded, solely by reason of the fact that he is aged 65 or over, from entitlement to the care component; or
- (b) at the middle or highest rate, that person shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the care component payable at the middle or highest rate,

but in determining that person's entitlement, section 37ZB of the Act shall have effect as if in paragraph (a) of subsection (2) of that section for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection was omitted.

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

(3) In this paragraph, a renewal claim is a claim made for a disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date the claim was made, been entitled under an earlier award to the care component or to attendance allowance (referred to in this paragraph as “the previous award”); and
- (b) attained the age of 65 before that entitlement ended.

Invalid Vehicle Scheme

4.—(1) Where—

- (a) a certificate issued in respect of a person under section 13(1) of the Social Security (Miscellaneous Provisions) Act 1977⁽²⁰⁾ is in force, or
- (b) an invalid carriage or other vehicle is or was on or after 1st January 1976 made available to a person by the Secretary of State under section 5(2)(a) of the NHS Act of 1977 or section 46(1) of the NHS Act of 1978, being a carriage or other vehicle which is—
 - (i) propelled by a petrol engine or an electric motor;
 - (ii) provided for use on a public road; and
 - (iii) controlled by the occupant,

that person shall not be precluded from entitlement to mobility component payable at the higher rate specified in regulation 4(2)(a), or a care component payable at the highest or middle rate specified in regulation 4(1)(a) or (b), by reason only that he has attained the age of 65.

(2) In determining a person’s entitlement where paragraph (1) applies, section 37ZB of the Act shall have effect as if in paragraph (a) of subsection (2) of that section for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection was omitted.

Age 65 or over and entitled to mobility component

5.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the higher rate specified in regulation 4(2)(a), and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A of that Act, or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) or (c) of section 37ZC of the Act.

(3) In this paragraph and paragraph 6 and 7 a renewal claim is a claim made for a disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date the claim was made been entitled under an earlier award to the mobility component (referred to in these paragraphs as “the previous award”); and
- (b) attained the age of 65 before that entitlement ended.

(20) 1977 c. 5.

Aged 65 or over and award of lower rate mobility component

6.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the lower rate specified in regulation 4(2) and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A of the Act, or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component, but in determining the person's entitlement to that component section 37ZC(11) of the Act shall have effect in his case as if paragraph (a), and the words "in any other case" in paragraph (b), were omitted.

Award of care component where person entitled to mobility component

7.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A of the Act, or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded solely by reason of the fact that he has attained the age of 65 from entitlement under section 37ZB(1) of the Act by virtue of having satisfied either the conditions mentioned in subsection (1)(b) or in subsection (1)(c), or in both those subsections, but in determining a person's entitlement, section 37ZB of the Act shall have effect as if in paragraph (a) of subsection (2) of that section, for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection were omitted.

SCHEDULE 2

Regulation 13

INVALID VEHICLE SCHEME

Interpretation

1. In this Schedule, unless the context otherwise requires,—

“the 1977 Act” means the Social Security (Miscellaneous Provisions) Act 1977(21);

“vehicle scheme beneficiary” means any person of a class specified in section 13(3)(a), (c) or (d) of the 1977 Act or any person of the class specified in section 13(3)(b) of the 1977 Act whose application was approved on or after 1st January 1976 and, where an invalid carriage or other vehicle was provided or as the case may be applied for, is a person of any such class in respect of whom the invalid carriage or other vehicle provided or applied for was a vehicle—

- (a) propelled by a petrol engine or by an electric motor,
- (b) supplied for use on a public road, and
- (c) to be controlled by the occupant;

“certificate” means a certificate issued in accordance with paragraph 3.

(21) 1977 c. 5; section 13(1) is amended by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), Schedule 2, paragraph 8.

Prescribed periods for purposes of section 13(3)(c) of the 1977 Act

2. For the purposes of section 13(3)(c) of the 1977 Act—
 - (a) the prescribed period before 1st January 1976 shall be that commencing with 31st January 1970 and ending with 31st December 1975; and
 - (b) the prescribed period after 1st January 1976 shall be that commencing with 2nd January 1976 and ending with 31st March 1978.

Issue of certificates

- 3.—(1) The Secretary of State shall issue a certificate in the form approved by him in respect of any person—
 - (a) who has made an application for a certificate in the form approved by the Secretary of State; and
 - (b) whom the Secretary of State considers satisfies the conditions specified in sub-paragraph (2).
- (2) The conditions specified in this sub-paragraph are that—
 - (a) the person is a vehicle scheme beneficiary; and
 - (b) his physical condition has not improved to such an extent that he no longer satisfies the conditions which it was necessary for him to satisfy in order to become a vehicle scheme beneficiary.

Duration and cancellation of certificates

- 4.—(1) Subject to sub-paragraph (2) the period during which a certificate is in force shall commence on the day specified in the certificate as being the date on which it comes into force and shall continue for the life of the person concerned.
- (2) If in any case the Secretary of State determines that the condition specified in paragraph 3(2)(b) is not satisfied, the certificate shall cease to be in force from the date of such non-satisfaction as determined by the Secretary of State (or such later date as appears to the Secretary of State to be reasonable in the circumstances).

Application of these Regulations in relation to vehicle scheme beneficiaries

5. In relation to a person in respect of whom a certificate is in force these Regulations shall have effect as though regulation 2(1)(a)(iii) were omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this instrument are consequential upon the introduction of disability living allowance by section 1 of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21) (“the 1991 Act”). The instrument is made before the end of the period of 6 months beginning with the coming into force of section 1; the regulations in it are therefore exempted by

section 61(5) of the Social Security Act 1986 (c. 50) (as amended by the Social Security Act 1989 (c. 24), Schedule 8, paragraph 12(3)) from the requirement under section 10 of the Social Security Act 1980 (c. 30) to refer the proposals to the Social Security Advisory Committee and are made without reference to that Committee.

Section 1 of the 1991 Act provides for the introduction of a new benefit to be known as disability living allowance, consisting of two components, the care component and the mobility component.

Part I of these Regulations contains provisions relating to citation, commencement and interpretation.

Part II contains provisions which relate to both components of disability living allowance. Regulation 2 sets out the conditions as to residence and presence in Great Britain which a person must satisfy to qualify for disability living allowance. Regulation 3 and Schedule 1 contain provisions relating to those aged 65 or over and regulation 4 sets out the rates at which benefit is payable. Regulation 5 relates to late claims by persons who were previously entitled to disability living allowance.

Part III relates only to the care component of disability living allowance. Regulation 6 specifies the qualifying period for those whose entitlement to the care component has been interrupted. Regulation 7 relates specifically to those undergoing renal dialysis. Regulations 8 to 10 impose restrictions on the payment of benefit where the person is accommodated in a hospital or is in certain accommodation where the cost is or may be met out of public or local funds.

Part IV relates only to the mobility component of disability living allowance. Regulation 11 relates to the qualifying period for the mobility component where entitlement has been interrupted. Regulation 12 specifies circumstances in which a person is to be treated as unable or virtually unable to walk. It also sets out the circumstances in which a person is to be taken to be blind and deaf, or severely mentally impaired. Regulation 13 and Schedule 2 provides for entitlement to the mobility component of certain persons eligible for invalid carriages.