
STATUTORY INSTRUMENTS

1991 No. 2891

SOCIAL SECURITY

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

Made - - - - *18th December 1991*

Coming into force - - *3rd February 1992*

Whereas a draft of the following Regulations was laid before Parliament in accordance with the provisions of 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 37ZD and 166(1), (2) and (3A) of the Social Security Act 1975(2), section 51(1)(g) and (k) of the Social Security Act 1986(3) and sections 5 and 11 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 by virtue of, or consequential upon, section 5 of the Act of 1991, hereby makes the following Regulations:

PART I

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Introduction of Disability Living Allowance) Regulations 1991 and shall come into force on 3rd February 1992.

(2) In these Regulations—

“the Act” means the Disability Living Allowance and Disability Working Allowance Act 1991(4);

“the 1975 Act” means the Social Security Act 1975(5);

(1) 1991 c. 21.

(2) 1975 c. 14; section 37ZD was inserted by the Disability Living Allowance and Disability Working Allowance Act 1991, section 1; section 166(3A) was inserted by the Social Security Act 1986 (c. 50), section 62(1).

(3) 1986 c. 50.

(4) 1991 c. 21.

(5) 1975 c. 14.

“the 1986 Act” means the Social Security Act 1986⁽⁶⁾;

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

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

“adjudicating authority” means, as the case may require, an adjudication officer, a social security appeal tribunal, a disability appeal tribunal or the chief or any other Social Security Commissioner appointed in accordance with section 97(3) of the 1975 Act, including a Tribunal of 3 such Commissioners constituted in accordance with section 116 of that Act;

“second tier adjudication” has the meaning given to it in regulation 15.

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to the regulation bearing that number in these Regulations;

(b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

(4) Any sum payable in accordance with these Regulations is payable subject to the provisions of chapters II and VI of Part II of the 1975 Act, and of any regulations made thereunder.

PART II

ATTENDANCE ALLOWANCE

Termination or cancellation of awards of attendance allowance

2.—(1) Any award of attendance allowance to a person to whom paragraph (2) applies for a period—

(a) part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992; or

(b) the whole of which falls after 5th April 1992, shall be cancelled.

(2) This paragraph applies to a person who has not attained the age of 65 on 6th April 1992.

Award of disability living allowance

3.—(1) Subject to the following provisions of this regulation, a person whose award of attendance allowance is terminated under regulation 2 shall be treated as having been awarded the care component for the period commencing on 6th April 1992 and ending on the day the period of the award of attendance allowance would have been ended but for regulation 2.

(2) Subject to the following provisions of this regulation and regulation 4 (claims for, and applications for reviews of decisions relating to, attendance allowance), a person whose award of attendance allowance is cancelled under regulation 2 shall be treated as having been awarded the care component for a period commencing on whichever of the following dates is the latest, namely—

(a) 6th April 1992, or

(b) the date which precedes by 3 months the date the awarded the attendance allowance would have commenced but for regulation 2, or

(c) where on 6th April 1992 the person has an award of the care component under paragraph (1), the day following the day that award ends,

and ending on the date the award of attendance allowance would have ended but for regulation 2.

(6) 1986 c. 50.

(3) Where the award of attendance allowance which has been terminated or cancelled under regulation 2 was made to the person in respect of a child who, on the date the award is terminated or cancelled, has not attained the age of 16 years, then that child, and not the person to whom the award was made, shall be treated for the purposes of paragraph (1) or (2) as having been awarded the care component.

(4) The weekly rate of disability living allowance payable by virtue of this regulation shall be—

- (a) in the case of a person to whom attendance allowance was payable, immediately before the award was terminated in accordance with regulation 2, at the higher rate specified in paragraph 1 of Part III of Schedule 4 to the 1975 Act, the highest of the three weekly rates of care component prescribed in accordance with section 37ZB(3) of the 1975 Act;
- (b) in the case of a person to whom attendance allowance was payable, immediately before the award of attendance allowance was terminated in accordance with regulation 2, at the lower rate specified in paragraph 1 of Part III of Schedule 4 to the 1975 Act, the middle of the three weekly rates of care component prescribed in accordance with section 37ZB(3) of the 1975 Act;
- (c) at the highest of the three weekly rates of care component where the award which was cancelled in accordance with regulation 2 was to be payable at the higher rate of attendance allowance and at the middle of those rates where the award which was cancelled was to be payable at the lower rate.

(5) Where immediately before 6th April 1992 a person had an award of attendance allowance but no benefit was payable under the award by virtue of regulations made under any provision mentioned in paragraph (6), benefit under the award of disability living allowance treated as made under this regulation shall likewise not be payable; but, subject to the following provisions of this regulation, for any parts of the period during which those regulations do not apply in his case, disability living allowance shall be payable—

- (a) at the highest of the three weekly rates of the care component prescribed in accordance with section 37ZB(3) of the 1975 Act if attendance allowance would, immediately before 6th April 1992 have been payable at the higher rate but for those regulations, or
- (b) at the middle of those rates if attendance allowance would immediately before 6th April 1992 have been payable at the lower rate but for those regulations.

(6) The provisions are—

- (a) section 35(6) of the 1975 Act (persons for whom accommodation is provided under certain enactments);
- (b) section 82(5) of the 1975 Act (persons undergoing detention in legal custody);
- (c) section 85(1) of the 1975 Act (overlapping benefits).

(7) For the purposes of determining the weekly rate of disability living allowance payable to a person under the age of 16 such as is mentioned in paragraph (3), paragraphs (4) and (5) shall apply as if he was the person to whom the attendance allowance was payable immediately before the award was terminated or would have been payable if the award had not been cancelled in accordance with regulation 2.

(8) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only so long as the person to whom the award is treated as made continues to satisfy conditions as to residence and presence prescribed under section 37ZA(6) of the 1975 Act and—

- (a) in the case of a person to whom the care component is payable at the highest rate, also continues to satisfy the conditions mentioned in section 37ZB(1)(b) and (c) of that Act, or

- (b) in the case of a person to whom the care component is payable at the middle of the three rates, also continues to satisfy one or other of the conditions mentioned in section 37ZB(1) (b) or (c) of that Act.
- (9) Subject to paragraph (10), paragraph (8) shall apply to a person who—
 - (a) before 6th April 1992 was entitled to an attendance allowance by virtue of section 35(1) (b) of the 1975 Act as enacted, and
 - (b) is awarded disability living allowance in accordance with this regulation,
 as if section 37ZB(1)(c)(ii) was modified to read—
 - “(a) he requires continual supervision in order to avoid substantial danger to himself or others”.
- (10) Paragraph (9) shall not apply where the award of disability living allowance is reviewed in accordance with provisions in Part III of the 1975 Act.

Claims for, and applications for reviews of decisions relating to, attendance allowance

- 4.—(1) Subject to paragraph (4), the replacement of attendance allowance by disability living allowance shall be disregarded in a case to which paragraph (2) or paragraph (3) applies.
- (2) This paragraph applies in a case where a person—
 - (a) is under the age of 65 on 6th April 1992;
 - (b) has an award of attendance allowance which expires after 5th April 1992; and
 - (c) makes a claim for attendance allowance for a period commencing immediately after that award expires.
 - (3) This paragraph applies in a case where—
 - (a) a person is under the age of 65 on 6th April 1992;
 - (b) that person has an award of attendance allowance or is the subject of a decision given on a claim or application either not to award benefit or that conditions of entitlement to attendance allowance were not satisfied;
 - (c) an application is made either—
 - (i) to the adjudication officer in accordance with section 104(2) of the 1975 Act for the decision to award, or as the case may be, not to award benefit to be reviewed, or
 - (ii) to the Attendance Allowance Board in accordance with regulation 38(2) of the Social Security (Adjudication) Regulations 1986(7) for a decision of theirs given in accordance with section 105(3) or section 106(1) of the 1975 Act (matters for determination by the Attendance Allowance Board), to be reviewed.
 - (4) Any award of attendance allowance made pursuant to this regulation shall be subject to the provisions of regulations 2 and 3 (termination or cancellation of awards of attendance allowance and award of disability living allowance as from 6th April 1992).

Claim for care component treated as having been made

- 5.—(1) Paragraph (2) applies where—
- (a) a person who—
 - (i) does not have an award of attendance allowance, or
 - (ii) does have an award of attendance allowance, but that award is due to expire before 6th April 1992,

makes a claim for attendance allowance, or an application in writing is made in accordance with section 104(2) of the 1975 Act for the decision to award or, as the case may be, not to award attendance allowance to him to be reviewed;

- (b) the claim or application is made after 2nd February 1992 or is made before 3rd February 1992 but has not been determined by that date; and
- (c) at the time the claim, or as the case may be, the application is determined the person to whom the claim or application relates has not made a claim for disability living allowance.

(2) Where the adjudication officer who is determining the claim or application such as is mentioned in paragraph (1) is satisfied that—

- (a) the person does not satisfy the conditions of entitlement to attendance allowance, but
- (b) solely on the evidence before him and apart from the requirement that he makes a claim for disability living allowance in the manner and within the time prescribed, the person would as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or higher, rate of that component,

a claim for the care component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a person has before 3rd February 1992 applied to the Attendance Allowance Board for a decision given pursuant to section 105(3) or 106(1) of the 1975 Act to be reviewed, and the question arising thereon has not been determined by 3rd February 1992, then—

- (a) if the Secretary of State is notified that the question is determined against that person, and
- (b) at the time he is notified, the person has not made a claim for disability living allowance, but
- (c) the Secretary of State is satisfied solely on the evidence before him and apart from any requirement that he makes a claim for disability living allowance in the manner and within the time prescribed, that the person may nonetheless satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or higher rate, of that component,

a claim for care component only shall be treated as having been made on 3rd February 1992 and the Secretary of State shall refer that claim to an adjudication officer for his determination.

Termination of awards of attendance allowance when beneficiary aged 65 or over

6.—(1) This regulation applies where a person—

- (a) has attained the age of 65 but not the age of 66, on 6th April 1992;
- (b) makes a claim for the mobility component by virtue of Parts IV or V of these Regulations or of any regulation made under section 37ZD of the 1975 Act (persons aged 65 or over); and
- (c) is entitled to attendance allowance on the day the claim is made.

(2) Where in connection with a claim such as is mentioned in paragraph (1)(b) an adjudicating authority makes an award of the mobility component, the person's award of attendance allowance shall, if it has not already been terminated, terminate as from the day which immediately precedes the day the period of the award of the mobility component commences.

(3) Where a person whose award of attendance allowance has been terminated in accordance with paragraph (2) also has a further award of attendance allowance due to commence on the day following the day the first award would have ended but for paragraph (2), the further award shall be cancelled.

(4) A person whose award of attendance allowance has been terminated in accordance with paragraph (2) or cancelled in accordance with paragraph (3) shall be treated as having been awarded the care component for the period specified in paragraph (5).

(5) The period the award commences is the day immediately following the day the award of attendance allowance is terminated in accordance with paragraph (2) and the award ends—

- (a) except in a case to which sub-paragraph (b) applies, on the day the award of attendance allowance mentioned in paragraph (1)(c) would have ended but for paragraph (2), or
- (b) where the person also had an award of attendance allowance to which paragraph (3) applies, on the day that award of attendance allowance would have ended but for paragraph (3).

(6) Paragraphs (4), (5), (6), (8), (9) and (10) of regulation 3 shall apply to awards of the care component having effect under this regulation as they apply to awards having effect under that regulation but as if references to 6th April 1992 were references to the date the period of the award of the care component commenced.

PART III

MOBILITY ALLOWANCE

Termination or cancellation of awards of mobility allowance

7.—(1) Any award of mobility allowance to a person for a period part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992.

(2) Any award of mobility allowance to a person for a period the whole of which falls after 5th April 1992 shall be cancelled.

Disability living allowance to replace mobility allowance

8.—(1) Subject to paragraph (4), a person whose award of mobility allowance is terminated in accordance with regulation 7(1) shall be treated as having been awarded the mobility component—

- (a) for a period commencing on 6th April 1992 and ending on the day the period of the award of mobility allowance would have ended but for regulation 7(1), or
- (b) for life, where the award of mobility allowance was for, or had effect as if for, a period ending on the day before the day on which the person would have attained the age of 80.

(2) Subject to paragraph (4) a person whose award of mobility allowance is cancelled in accordance with regulation 7(2) shall be treated as having been awarded the mobility component—

- (a) except where sub-paragraph (b) applies, for a period commencing on the date the award of mobility allowance would have commenced, and ending on the date that award would have ended, but for regulation 7(2);
- (b) where the award of mobility allowance was for a period ending with the day before the day the person would have attained the age of 80, for life, commencing on the date the award of mobility allowance would have commenced but for regulation 7(2).

(3) The weekly rate of disability living allowance payable by virtue of this regulation shall be the higher of the two weekly rates of mobility component prescribed in accordance with section 37ZC(10) of the 1975 Act.

(4) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only so long as the person to whom the award is treated as made continues—

- (a) to satisfy conditions as to residence and presence prescribed under section 37ZA(6) of the 1975 Act, and
- (b) to satisfy or be deemed in accordance with section 13(1) of the Social Security (Miscellaneous Provisions) Act 1977⁽⁸⁾ (mobility component for certain persons eligible for invalid carriages) to satisfy one of the conditions mentioned in paragraphs (a) to (c) of subsection (1) of section 37ZC of the 1975 Act.

Claims for, and applications for reviews of decisions relating to, mobility allowance

9.—(1) The replacement of mobility allowance by disability living allowance shall except to the extent specified in paragraphs (4) and (5) be disregarded in a case to which paragraph (2) or paragraph (3) applies.

- (2) This paragraph applies in a case where a person—
 - (a) is under the age of 65 on 6th April 1992;
 - (b) has an award of mobility allowance which expires after 5th April 1992; and
 - (c) makes a claim for mobility allowance for a period commencing immediately after that award expires.
- (3) This paragraph applies in a case where—
 - (a) a person is under the age of 65 on 6th April 1992;
 - (b) that person has an award of mobility allowance or is the subject of a decision given on a claim or application not to award benefit; and
 - (c) an application is made to an adjudication officer in accordance with section 104(2) of the 1975 Act for the decision to award, or as the case may be, not to award benefit to be reviewed.

(4) Any award of mobility allowance made pursuant to this regulation shall be subject to the provisions of regulations 7 and 8 (termination or cancellation of awards of mobility allowance and disability living allowance to replace mobility allowance as from 6th April 1992).

(5) In determining under this regulation a person's entitlement to mobility allowance for any period after 5th April 1992—

- (a) the conditions as to residence and presence prescribed under section 37ZA(6) of the 1975 Act (which relates to residence and presence conditions for disability living allowance) and not those prescribed under section 37A(1) of that Act (mobility allowance) shall apply; and
- (b) for the reference to 12 months in section 37A(2)(a) of the 1975 Act there shall be substituted a reference to 9 months.

Claim for mobility component treated as having been made

10.—(1) Paragraph (2) applies where—

- (a) a person who—
 - (i) does not have an award of mobility allowance, or
 - (ii) does have an award of mobility allowance, but that award is due to expire before 6th April 1992,

makes a claim for mobility allowance or an application in writing is made in accordance with section 104(2) of the 1975 Act for a decision on a claim for mobility allowance relating to him to be reviewed or a question has been referred to a medical board or a case

⁽⁸⁾ 1977 c. 5, amended by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), Schedule 2 paragraph 7.

to a medical appeal tribunal in accordance with section B of Part IV of the Social Security (Adjudication) Regulations 1986⁽⁹⁾;

- (b) the claim, application or reference is made after 2nd February 1992, or is made before 3rd February 1992 but has not been determined by that date; and
- (c) at the time the claim, application or reference is determined, the person to whom it relates has not made a claim for disability living allowance.

(2) Where an adjudication officer is determining a claim or application such as is mentioned in paragraph (1) and he is satisfied that—

- (a) the person does not satisfy conditions for entitlement to mobility allowance, but
- (b) solely on the evidence before him, and apart from the requirement that the person makes a claim for disability living allowance in the manner and within the time prescribed, the person would as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy those conditions of entitlement to the mobility component which qualify him for—
 - (i) the lower, but not the higher rate of mobility component, or
 - (ii) the higher rate of mobility component but only by virtue of being a person who falls within section 37ZC(3) of the 1975 Act (which relates to persons severely mentally impaired),

a claim for the mobility component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a claim, application or reference is being determined by a Board or Tribunal, and they are satisfied that—

- (a) the question before them be determined against the person claiming mobility allowance, but
- (b) solely on the evidence before them, the person may, as from 6th April 1992, or from such later date as they may in any particular case determine, satisfy the conditions of entitlement to mobility component specified in section 37ZC(1)(c) or (d),

they shall refer the case to an adjudication officer.

(4) Where a case is referred to an adjudication officer in accordance with paragraph (3), a claim for mobility component shall be treated as having been made on 3rd February 1992, and the adjudication officer shall determine that claim.

PART IV

PROVISIONS COMMON TO PARTS II AND III

Separate awards of attendance allowance and mobility allowance

11.—(1) Where—

- (a) a person has an award of attendance allowance terminated or cancelled under Part II of these Regulations and an award of mobility allowance terminated or cancelled under regulation 7, and
- (b) awards of disability living allowance are treated as made in accordance with Parts II and III of these Regulations,

those awards shall be separate awards.

(9) [S.I. 1986/2218](#).

(2) Where a person—

- (a) has an award of attendance allowance or mobility allowance, but not both for a period commencing before 6th April 1992;
- (b) in accordance with Parts II and III of these Regulations is treated as from 6th April 1992 as having one award of disability living allowance consisting of either the care component or the mobility component;
- (c) claims, or is treated as claiming, disability living allowance but only in respect of the component which is not the subject of the award mentioned in sub-paragraph (b) above; and
- (d) is awarded disability living allowance for that component on that claim for a period beginning on or after 6th April 1992, but before 5th April 1993,

the award so made shall be in addition to the award of disability living allowance treated as arising under Parts II and III of these Regulations.

Backdating of awards of disability living allowance

12.—(1) This regulation applies where—

- (a) a person claims or is treated as claiming attendance allowance or mobility allowance before 6th April 1992;
- (b) the decision on the claim is given after 2nd February 1992; and
- (c) the decision on the claim was that the person was not entitled to either of those benefits.

(2) Where such a person submits a claim for disability living allowance within 3 months of the date the decision on the claim was notified to him, any award of disability living allowance arising from the later claim may, notwithstanding section 37ZE(1) of the 1975 Act, be for a period commencing on such earlier date (but not before 6th April 1992) as the authority determining the claim decide the person satisfied the appropriate conditions of entitlement thereto.

(3) Notwithstanding section 37ZD(1) of the 1975 Act, a person who has attained the age of 65, but not the age of 66, on 6th April 1992, shall be entitled to disability living allowance where, in addition to satisfying the appropriate conditions of entitlement to that allowance, he made a claim for it within 3 months of the date on which he was so notified of the decision on the claim for attendance allowance or mobility allowance.

(4) Any award made by virtue of paragraph (3) shall, notwithstanding section 37ZE(1) of the 1975 Act be for a period commencing on—

- (a) 6th April 1992, or, if later,
- (b) the date he first satisfies the appropriate conditions of entitlement to disability living allowance (other than the need to make a claim for it).

(5) In this regulation, the “claim” in the expression “decision on the claim” is the claim referred to in sub-paragraph (a) of paragraph (1) and the “decision” is the first decision given on that claim by an adjudicating authority after 2nd February 1992.

(6) This regulation applies to an application made under section 104(2) or 106(1) of the 1975 Act for a review of a determination as it applies to a claim for benefit but as if the application was the claim and the decision was the decision given on that application.

Treatment of two awards of disability living allowance

13.—(1) Where a person has two awards of disability living allowance both of which are for periods which commence before 5th April 1993 and expire after 4th April 1993, then those awards shall both terminate immediately before 5th April 1993.

(2) A person whose awards of disability living allowance have been terminated by virtue of paragraph (1) shall be treated, as from 5th April 1993, as having been granted one award of disability living allowance—

- (a) where both the awards terminated by virtue of paragraph (1) were for life, consisting of both components for life, payable at a weekly rate which is the aggregate of the appropriate weekly rate for each of those components;
- (b) where one of the awards terminated by virtue of paragraph (1) was for life and the other was for a fixed period, consisting of one component for life, corresponding to the component which was for life under the terminated award, and the other component for a fixed period ending on the day the award for the fixed period would have ended but for the termination of the award under paragraph (1), and payable at the weekly rate which is the aggregate of the appropriate weekly rate for each of the components from 5th April 1993 until the day the period of the fixed award ends, and thereafter at the weekly rate which is the appropriate weekly rate for the component awarded for life;
- (c) where both awards terminated by virtue of paragraph (1) were for fixed periods ending on different days, consisting of both components for a period ending on the earlier of those days payable at the weekly rate which is the aggregate of the appropriate weekly rate for each of those components;
- (d) where both awards terminated by virtue of paragraph (1) were for fixed periods ending on the same day, consisting of both components for a period ending on that day, payable at the weekly rate which is the aggregate of the appropriate weekly rate for each of those components.

(3) In this regulation, the “appropriate weekly rate” in relation to either component of disability living allowance is the rate which corresponds to the rate payable for that component under any award terminated in accordance with paragraph (1).

(4) An award of disability living allowance granted in accordance with this regulation shall continue for the period of the award only so long as the person to whom the award is treated as having been granted continues to satisfy—

- (a) conditions as to residence and presence prescribed under section 37ZA(6) of the 1975 Act, and
- (b) any other conditions of entitlement appropriate to that award specified in sections 37ZA to 37ZE of the 1975 Act.

Reviews

14.—(1) Where a person is treated as having been awarded disability living allowance under any of the preceding provisions of these Regulations, sections 100A(1), (2) and (4) and 104A(1) of the 1975 Act (reviews of decision given by the adjudication officer and the appellate authorities) shall have effect in his case as if the decision there mentioned was the decision which was referable to the award of disability living allowance.

(2) For the purposes of this regulation, a decision is referable to an award of disability living allowance if—

- (a) it was a decision awarding attendance allowance or mobility allowance to such a person and the decision was terminated or cancelled in accordance with Part II or Part III of these Regulations and replaced by the person’s current award of disability living allowance, or was so terminated or cancelled and replaced by an award of disability living allowance which was itself terminated under regulation 13 and replaced by the person’s current award of disability living allowance; or

- (b) it was a decision awarding disability living allowance to such a person which was terminated in accordance with regulation 13 and replaced by the person's current award of disability living allowance.
- (3) A decision is also referable to an award of disability living allowance where it was—
 - (a) a decision of the Attendance Allowance Board on a matter reserved for the Board's determination under section 105(3) of the 1975 Act and the decision to award attendance allowance mentioned in paragraph (2)(a) was dependant upon the Board's decision; or
 - (b) a decision of a medical board or a medical appeal tribunal on a medical question and the decision awarding mobility allowance mentioned in paragraph (2)(a) was dependant upon the board's or, as the case may be, the tribunal's decision.
- (4) In paragraph (3) "medical board" means 2 or more adjudicating medical practitioners appointed by the Secretary of State to act jointly in consideration of the medical question, and "medical question" has the meaning it bore in regulation 53 of the Social Security (Adjudication) Regulations 1986⁽¹⁰⁾ on 3rd February 1992.

PART V

CLAIMS, PAYMENTS AND ADJUDICATION

Second tier adjudication

15. For the purposes of this Part of these Regulations, the expression "second tier adjudication" means adjudication by an adjudication officer; and for those purposes section 100D(I) of the 1975 Act (appeals following reviews) shall apply to any decision given by the adjudication officer as if it was a decision given by him on a review under section 100A(1) of that Act⁽¹¹⁾ (review of a decision on any ground).

Claims for a single component of disability living allowance

16.—(1) Where a person—

- (a) had an award of attendance allowance or mobility allowance, but not both for a period commencing before 6th April 1992; and
- (b) in accordance with the above regulations is treated as from 6th April 1992 as having one award of disability living allowance at the weekly rate applicable in his case to either the care component or the mobility component,

he may submit a claim for a disability living allowance relating solely to that component to which he has no entitlement.

(2) Any such claim made after 4th April 1993 shall be treated as an application for a review under section 100A(I) of the 1975 Act, if made within the period prescribed under that provision, or if not, under section 100A(2) of that Act, of an award of disability living allowance in force at the time the claim is made.

(3) Subject to paragraph (4), an award of disability living allowance consisting of one component may be made by virtue of this regulation in addition to any award of disability living allowance consisting only of the other component which is treated as having been made to the claimant in accordance with the preceding provisions of these Regulations.

⁽¹⁰⁾ S.I. 1986/2218; regulation 53 was amended by regulation 2(2) and (3) of S.I. 1988/1725 and regulation 3 of S.I. 1989/1689.
⁽¹¹⁾ Section 100A was inserted by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), Schedule 1, paragraph 5.

(4) An award shall not be made in accordance with Paragraph (3) where the period of the award would commence after 4th April 1993.

(5) Where a claim submitted in accordance with paragraph (1) is received in an office of the Department of Social Security or the Department of Employment before 5th April 1993, any award on that claim may, notwithstanding anything in section 37ZE(1) of the 1975 Act⁽¹²⁾, commence on a date not earlier than 6th April 1992.

Claims in addition

17.—(1) This regulation applies in a case where an adjudicating authority in determining a person's claim for, or application for a review of a decision relating to, disability living allowance is satisfied that the person satisfies the conditions of entitlement to the care component which qualify him for the highest or the middle of the three rates prescribed under section 37ZB(3) of the 1975 Act or to the mobility component which qualify him for the higher of the 2 rates prescribed under section 37ZC(10) of that Act or to both, and that the person is neither—

- (a) entitled to attendance allowance or mobility allowance or both, nor
- (b) awaiting a determination by an adjudicating authority on—
 - (i) a claim made by him or on his behalf for one or both of those benefits, or
 - (ii) an application for review, made in accordance with section 104(2) of the 1975 Act, of a decision relating to one or both of those benefits, or
 - (iii) an appeal from a decision given on a claim or application for review of a decision relating to one or both of those benefits.

(2) Subject to paragraphs (3) and (4), where in determining a person's claim for, or application for a review of a decision relating to, disability living allowance in a case to which this regulation applies, an adjudicating authority is satisfied that the person—

- (a) in addition to satisfying the conditions of entitlement to the care component, also satisfied the conditions of entitlement to attendance allowance for a period before 6th April 1992; or
- (b) in addition to satisfying the conditions of entitlement to the mobility component, also satisfied conditions of entitlement to mobility allowance, for a period before 6th April 1992,

other than the condition that he makes a claim for the benefit in question in the manner and within the time prescribed in relation thereto, the authority shall treat the claim for disability living allowance, or in the case of an application for review of the decision relating to disability living allowance, the claim on which that decision was made, as a claim also for—

- (i) attendance allowance, where sub-paragraph (a) above is satisfied,
- (ii) mobility allowance, where sub-paragraph (b) above is satisfied,
- (iii) attendance allowance and mobility allowance, where sub-paragraph (a) and sub-paragraph (b) are satisfied,

and determine that claim accordingly.

(3) Where a claim for disability living allowance is a claim for a single component in accordance with regulation 16 then paragraph (2) shall apply only where the adjudicating authority is satisfied the person fulfils or fulfilled the conditions of entitlement to—

- (a) attendance allowance, where the claim is for the care component, or
- (b) mobility allowance where the claim is for the mobility component.

⁽¹²⁾ Section 37ZE was inserted in the Social Security Act 1975 (c. 14) by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), section 1.

(4) Any award of mobility allowance or attendance allowance arising on a claim treated as made in accordance with paragraph (2) shall be for a period ending not later than 5th April 1992.

(5) Where an adjudicating authority is satisfied that the person whose claim or application he is determining satisfies the conditions of entitlement to mobility allowance for a period before 6th April 1992, then he shall determine that claim or application as if in section 37ZC of the 1975 Act, paragraph (a) of subsection (9) was omitted.

Claim for disability living allowance treated as not having been made

18.—(1) Subject to the following provisions of this regulation, a claim for a disability living allowance shall be treated as not having been made where the person who made the claim, or on whose behalf the claim was made—

- (a) has an award of both attendance allowance and mobility allowance and each award is for a period due to expire after 5th April 1992, or
- (b) has an existing award of disability living allowance, consisting of both components, or
- (c) has two existing awards of disability living allowance, where one award consists of the care component and the other award consists of the mobility component, or
- (d) has an award of disability living allowance consisting of one component and has in addition submitted another claim for a single component of that benefit in accordance with regulation 16.

(2) Paragraph (1) shall not apply where the claim for a disability living allowance is made in anticipation of the expiration of the award of attendance allowance or of mobility allowance or of disability living allowance.

Claims for attendance allowance or mobility allowance treated as not having been made

19. Where after 2nd February 1992 a person has made a claim for disability living allowance, then any claim made on that day or subsequent to that day for attendance allowance or mobility allowance shall be treated as not having been made.

Claim for disability living allowance where person has an award of attendance allowance or mobility allowance

20.—(1) Subject to paragraph (3) where a person—

- (a) has an award of attendance allowance, and
- (b) makes a claim for disability living allowance,

the claim for the care component shall be treated as not having been made.

(2) Subject to paragraph (3) where a person—

- (a) has an award of mobility allowance, and
- (b) makes a claim for disability living allowance,

the claim for the mobility component shall be treated as not having been made.

(3) Where the claim for disability living allowance is made in anticipation of the expiry of an award of attendance allowance or of mobility allowance, then paragraph (1) or, as the case may be, paragraph (2) shall not apply.

Claims for both old and new benefits outstanding

21.—(1) This regulation applies where—

- (a) a claim to either mobility allowance or attendance allowance, or both has been made by or on behalf of a person;
 - (b) the claim or claims have not been determined by 3rd February 1992, or if it or they have been determined the decision given was that no award be made and an application for review of that decision or an appeal to an appeal tribunal from that decision awaits determination on or after 3rd February 1992; and
 - (c) a claim for disability living allowance is made by the person mentioned in sub-paragraph (a) before the determination on the claim or, as the case may be, the application or appeal, is made.
- (2) Where the person mentioned in paragraph (1)(a) has claimed—
- (a) attendance allowance, but not mobility allowance, the claim for disability living allowance shall be treated, until the claim, application or appeal is determined, as a claim for mobility component only;
 - (b) mobility allowance, but not attendance allowance, the claim for disability living allowance shall be treated, until the claim, application or appeal is determined, as a claim for care component only;
 - (c) attendance allowance and mobility allowance, the claim for disability living allowance shall be treated, until the claims, applications or appeals in respect of both those benefits are determined, as not having been made.
- (3) When the claim, application or appeal is or both are determined and—
- (a) the person is awarded attendance allowance, then the claim for care component shall be treated as not having been made;
 - (b) the person is awarded mobility allowance, then the claim for mobility component shall be treated as not having been made;
 - (c) the person is awarded both attendance allowance and mobility allowance, then the claim for disability living allowance shall continue to be treated as not having been made;
 - (d) no award is made, the claim for disability living allowance in so far as it has not been determined, shall then be referred to the adjudication officer for his determination.

Determination of claims for, or of applications for review of decisions relating to, attendance allowance

22.—(1) The Attendance Allowance Board shall not consider any question reserved for their determination under section 105(3) of the 1975 Act where the claim for, or application for a review of a decision relating to, attendance allowance was made after 15th March 1992, whether or not the person to whom the question refers has attained the age of 65.

(2) In a case to which paragraph (1) applies, the adjudication officer shall determine the claim or application in accordance with the system of adjudication for attendance allowance introduced by the Act.

(3) Any question referred for determination by the Attendance Allowance Board in accordance with section 105(3) or 106(1) of the 1975 Act which has not been determined by 5th April 1992, shall be determined as soon as reasonably practicable thereafter in accordance with paragraph (4).

- (4) For the purposes of paragraph (3), the question shall be determined—
- (a) except in a case to which sub-paragraph (b) applies, by the adjudication officer, or
 - (b) where the application for review of a decision of the Attendance Allowance Board is made within 3 months of that decision being given, as a second tier adjudication.

(5) For the purposes of this regulation, any application for a review of a decision which required the leave of the Attendance Allowance Board shall itself be treated as an application for review.

(6) In determining any question in accordance with paragraph (4) any correspondence issuing from the Attendance Allowance Board indicating the matters which, in the Board's opinion arise on a question before it, together with the submissions (if any) made by or on behalf of the claimant in response to that correspondence, may be taken into account by the adjudication officer as evidence relating to the question to be determined.

(7) Where before 6th April 1992, the Board has issued a certificate in accordance with section 35(2) of the 1975 Act, but the adjudication officer has not determined the claim or as the case may be the application for review to which the certificate relates, then in determining that claim or application the adjudication officer shall treat the certificate—

- (a) if it specifies both the conditions mentioned in section 35(1)(a) and (b) of the 1975 Act, as evidence that the person satisfies or is likely to satisfy both the conditions mentioned in subsections (1)(a) and (1)(b) of section 35 throughout the period mentioned in the certificate; and
- (b) if it specifies one or other of them, but not both, as evidence of his falling within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout the period mentioned in the certificate.

(8) Where the Board has before 6th April 1992 determined a question referred to them in accordance with section 105(3) of the 1975 Act and the decision is such that no award of attendance allowance could have been made on the basis of it, then in determining on or after 6th April 1992 any claim for, or application for review of a decision relating to attendance allowance to which the Board's decision relates, the adjudication officer shall treat the decision of the Board, and any reasons given by the Board in support of their decision, as evidence that the person does not satisfy those requirements to which the decision relates.

(9) For the purposes of the provisions of Part III of the 1975 Act in so far as they relate to the review of decisions of adjudication officers, any certificate issued by the former Attendance Allowance Board shall, after 5th April 1992 be treated as a decision of an adjudication officer and as such shall be subject to review on the same grounds and in the same circumstances as decisions of adjudication officers.

Appeals to Commissioners from decisions of the Attendance Allowance Board

23.—(1) This regulation applies where—

- (a) a person has appealed to the Commissioner against a determination of the Attendance Allowance Board under section 106(2) of the 1975 Act; and
- (b) the Commissioner determines the appeal on or after 16th March 1992.

(2) Where the Commissioner holds that the Board's decision was erroneous in point of law, he shall set it aside and—

- (a) he shall have the power—
 - (i) to give the decision which he considers the Board should have given, if he can do so without making fresh or further findings of fact; or
 - (ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; or
- (b) in any other case he shall refer the case for second tier adjudication with directions for its determination.

(3) Where in accordance with paragraph (2)(a) the Commissioner gives the decision himself, he shall refer that decision to the adjudication officer with directions to determine the claim or application for review from which the appeal to the Commissioner arose.

Persons claiming mobility allowance

24.—(1) In this regulation, the expression “medical question” has the meaning it bore in regulation 53 of the Social Security (Adjudication) Regulations 1986⁽¹³⁾ on 3rd February 1992.

(2) Any claim for mobility allowance made after 15th March 1992, or any application made after 9th February 1992 for a review of a decision relating to the medical question or otherwise to mobility allowance, shall be subject to adjudication in accordance with the provisions of the 1975 Act relating to disability living allowance, and the modification, additions and exclusions set out in Section B of Part IV of the Social Security (Adjudication) Regulations 1986 shall be disregarded.

(3) Subject to the following provisions of this regulation, where a claim for, or an application for a review of a decision relating to, mobility allowance, other than a claim or application mentioned in paragraph (2), has not been determined as at 6th April 1992, then that claim or application shall as from that date be subject to adjudication in accordance with provisions in the 1975 Act relating to disability living allowance.

(4) Where a medical question arose on a claim or question to which paragraph (3) refers, then, in determining that claim or question the adjudication officer—

- (a) shall have regard to any report received from the medical practitioner to whom the medical question has been referred;
- (b) if a report of a medical practitioner to whom the medical question has been referred has not been received by the adjudication officer may—
 - (i) subject to sub-paragraph (ii) below, await the report and have regard to it before determining the claim or application, or
 - (ii) where the report has not been received by the adjudication officer within 6 weeks of the question being referred to the medical practitioner, determine the claim without waiting for the report;
- (c) where the medical question has been determined by the medical board before 6th April 1992, shall have regard to any report made by the board on that question;
- (d) where the medical question has been referred to a medical board otherwise than on an appeal by the person claiming the allowance, but the board has not determined that question by 6th April 1992, shall consider the question as though—
 - (i) the reference had not been made, and
 - (ii) the provisions in section 115C of the 1975 Act (references of claims to medical practitioners and the Disability Living Allowance Advisory Board) relating to disability living allowance applied also to the medical question;
- (e) where the medical question was referred to the medical board following an appeal by the person claiming the allowance but the board has not determined that question by 6th April 1992, shall consider the question as though—
 - (i) it was an application for a review under section 100A(1) of the 1975 Act (reviews of decisions by adjudication officers) of the decision appealed against, and
 - (ii) the provisions in section 115C of the 1975 Act relating to disability living allowance applied also to the medical question;

⁽¹³⁾ S.I. 1986/2218; regulation 53 was amended by regulation 2(2) and (3) of S.I. 1988/1725 and regulation 3 of S.I. 1989/1689.

- (f) where the medical question has been referred to a medical appeal tribunal, shall be bound by any decision given by the Tribunal on the matters to which it relates.
- (5) No reference on a medical question to a medical board shall be made by an adjudication officer after 9th February 1992.
- (6) Any medical question which would but for paragraph (5) have been referred to a medical board shall be subject to adjudication in accordance with the provisions of the 1975 Act relating to disability living allowance, and for this purpose the medical question shall be determined as though it was a second tier adjudication.
- (7) Any appeal on a medical question from a decision of a medical board which is made on or after 10th February 1992 shall be subject to adjudication in accordance with the provisions of the 1975 Act relating to disability living allowance and the provisions of Section B of Part IV of the Social Security (Adjudication) Regulations 1986⁽¹⁴⁾ shall be disregarded.
- (8) Section 100D(1) of the 1975 Act shall apply to the appeal mentioned in paragraph (7) as if the decision appealed against was the decision of an adjudication officer given on review under section 100A(1) of the 1975 Act and the appeal shall be to a disability appeal tribunal.
- (9) Any medical question referred to a medical appeal tribunal which has not been determined by 6th April 1992 shall—
- (a) where the person to whom the question relates so consents, continue to be heard by the medical appeal tribunal, or
 - (b) where he does not consent, be subject to adjudication in accordance with the provisions of the 1975 Act relating to disability living allowance, and for this purpose, the medical question shall be determined by a disability appeal tribunal and not by a medical appeal tribunal.
- (10) Where a disability appeal tribunal is determining, pursuant to paragraph (9), a medical question which was considered by a medical appeal tribunal but adjourned with a request for further information or a report, then the disability appeal tribunal shall await the submission of that information or report but not for more than 3 months from the date the information or report was requested, and shall if it is available take it into account in determining the question before them.
- (11) Any decision of an adjudication officer, a medical board or a medical appeal tribunal on a medical question may be reviewed at any time by an adjudication officer if—
- (a) he is satisfied, in the case of a decision of a medical appeal tribunal by fresh evidence, that the decision was given in ignorance of, or was based upon a mistake as to, a material fact; or
 - (b) there has been a relevant change of circumstances since the decision was given.
- (12) Subsections (3), (4) and (6) to (9) of section 104A of the 1975 Act shall apply to reviews under paragraph (11) as they apply to reviews under that section.
- (13) Section 112 of the 1975 Act (appeal on a question of law to the Commissioner) shall have effect in relation to a decision of a medical appeal tribunal on a medical question subject to the modifications that in subsection (6) for the words “a medical appeal tribunal” there were substituted the words “an adjudication officer” and as though subsection (7) were omitted⁽¹⁵⁾.
- (14) Where the Commissioner returns a question to an adjudication officer pursuant to paragraph (11), section 100D(1) of the 1975 Act (appeals following reviews) shall apply to the decision of the adjudication officer on that question as if it were a decision given by him on a review under section 100A(1) of that Act (review of a decision on any ground).

⁽¹⁴⁾ S.I. 1986/2218.

⁽¹⁵⁾ Subsections (6) and (7) were added by the Social Security Act 1989 (c. 24), Schedule 3, paragraph 9(2).

Reference to an adjudication officer

25.—(1) This regulation applies where, on or after 3rd February 1992 a disability appeal tribunal are determining an appeal which relates to a claim for attendance allowance or a disability appeal tribunal or a medical appeal tribunal are determining an appeal which relates to a claim for mobility allowance.

(2) Where an appeal tribunal are unable to make an award of the benefit claimed, but, solely on the evidence before them they are satisfied that the claimant may qualify for—

- (a) where the claim relates to attendance allowance, the lowest of the three rates of care component prescribed under section 37ZB(3) of the 1975 Act; or
- (b) where the claim relates to mobility allowance—
 - (i) the lower of the two rates of mobility component prescribed under section 37ZC(6) of the 1975 Act, or
 - (ii) the higher rate of the two rates of mobility component because he may fall within section 37ZC(1)(c) of the 1975 Act (entitlement to mobility component for the severely mentally impaired),

the appeal tribunal may refer to an adjudication officer the question of his entitlement to disability living allowance.

(3) Where an adjudication officer has a question referred to him in accordance with paragraph (2), he shall treat—

- (a) the claim for attendance allowance as being also a claim for disability living allowance relating solely to the care component, or
- (b) the claim for mobility allowance as being also a claim for disability living allowance relating solely to the mobility component,

made on the 3rd February 1992 and proceed to determine that claim in accordance with section 99 of the 1975 Act.

(4) An award made in accordance with paragraph (3) may be for a period commencing on 6th April 1992 or on such later date as the adjudication officer may, in the circumstances of the particular case, determine.

Payments of disability living allowance

26.—(1) This regulation applies to the payment of awards of disability living allowance where the award arises in accordance with Parts II or III of these Regulations.

(2) Subject to paragraphs (3), (4) and (5), where a person has an award of attendance allowance, mobility allowance or disability living allowance which—

- (a) is payable by direct credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987(16), and
- (b) is superseded by an award treated as made under Parts II or III of these Regulations,

the award mentioned in sub-paragraph (b) above shall continue to be paid by direct credit transfer into the same bank or other account as the award it superseded; and for this purpose, any application made or treated as made and any consent given or treated as given in relation to the terminated award shall be treated as made or given in relation to the award mentioned in sub-paragraph (b) above.

(3) Where a person—

- (a) has two awards of disability living allowance, and

(16) S.I. 1987/1968.

- (b) those awards are paid separately but into the same account by direct credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987,

then those payments may at any time before 6th April 1993 be combined into one payment, equal to the aggregate of the two payments, payable by direct credit transfer into that account.

(4) Where a person has two awards of disability living allowance paid by direct credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987 into different accounts, those payments may, with the consent of the Secretary of State, be made into such one account as the person to whom the payments are made may specify in a notice in writing to the Secretary of State.

(5) For the purposes of paragraph (3) any application made or treated as made and any consent given or treated as given in relation to a terminated or cancelled award shall be treated as made or given in relation to the award treated as having been made by virtue of these Regulations.

(6) Where a person has an award of disability living allowance which is payable by direct credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987, any further award of disability living allowance made to that person shall be paid by direct credit transfer into the same bank or other account as the award first mentioned; and any application made or treated as made and any consent given or treated as given in relation to the first mentioned award shall be treated as made or given also in relation to the further award.

(7) Subject to the following provisions of this regulation, where attendance allowance was payable to a person otherwise than by direct credit transfer, any disability living allowance arising in accordance with Part II of these Regulations shall be payable on the day of the week the attendance allowance was or would have been payable.

(8) Subject to paragraph (9), where mobility allowance was payable to a person otherwise than by direct credit transfer, any disability living allowance arising in accordance with regulation 8 shall be payable on a Wednesday.

(9) Where both attendance allowance and mobility allowance were payable to a person otherwise than by direct credit transfer, any disability living allowance payable in accordance with an award treated as made by virtue of these Regulations shall be payable—

- (a) from such date before 6th April 1993 as the Secretary of State may in any particular case determine—
 - (i) except in a case to which head (ii) below applies, on a Wednesday; or
 - (ii) where in any particular case payment of attendance allowance was combined with the payment of another benefit and that benefit was payable on a day of the week other than Wednesday, the care component shall be payable on that day and the mobility component shall be payable on a Wednesday;

- (b) until that day, care component shall be payable in the manner and at the time when attendance allowance was payable and mobility component shall likewise be payable in the manner and at the time when mobility allowance was payable.

(10) Where attendance allowance was payable to a person otherwise than by direct credit transfer and an award of mobility component is made to that person, any award of disability living allowance treated as having been made by virtue of these Regulations shall be payable, from such date before 6th April 1993 as the Secretary of State may in any particular case determine—

- (a) except in a case to which sub-paragraph (b) applies, on a Wednesday; or
- (b) where in any particular case the payment of attendance allowance was combined with the payment of another benefit and that benefit was payable on a day of the week other than Wednesday, the care component shall be payable on that day and the mobility component shall be payable on a Wednesday.

(11) Where in accordance with this regulation payment of a person's award of disability living allowance is changed to a Wednesday, and because of this change in pay day the interval between the first Wednesday pay day and the last previous pay day (referred to in this paragraph as "the relevant period") is greater than it would have been but for that change, then the first Wednesday payment of disability living allowance shall include by way of adjustment an additional payment which is equal to the daily rate for the benefit or part of a benefit which is subject to that change, multiplied by a number determined by deducting from the number of days in the relevant period, the number of days which would have been in that period but for the change in pay days.

(12) Where before 6th April 1992 a person has an award of attendance allowance and of mobility allowance and—

- (a) those awards are paid in a different manner, and
- (b) both awards are terminated or cancelled in accordance with Parts II and III of these Regulations,

then as from 6th April 1992 the awards of disability living allowance shall be paid in accordance with paragraph (13).

(13) In cases to which this paragraph refers, disability living allowance shall be paid—

- (a) from such date before 5th April 1993 as the Secretary of State may in any particular case determine—
 - (i) on the day, for the period and in the manner specified in an election made by that person and approved by the Secretary of State, or
 - (ii) where no such election is made within 4 weeks of a form of election being posted to that person, on a Wednesday by means of a benefit order book.
- (b) until that date, on such days, at such intervals and in such manner as the former awards of attendance allowance and mobility allowance were paid.

(14) Where a person who has not attained the age of 65 on 6th April 1992—

- (a) has claimed attendance allowance or disability living allowance and pursuant to that claim an award of attendance allowance was made after 2nd February 1992, or
- (b) has applied for a review of a decision of the Attendance Allowance Board or the adjudication officer not to award attendance allowance and pursuant to that application an award of attendance allowance is made after 2nd February 1992,

and that award is for a period commencing before 6th April 1992, both the attendance allowance and any disability living allowance granted in place of the award of attendance allowance shall be payable at four weekly intervals on a Wednesday, unless in any particular case the Secretary of State arranges otherwise.

(15) For the purpose of paragraph (11), the "daily rate" is an amount equal to one-seventh of the weekly rate, rounded up to the next 1p.

Persons unable to act

27.—(1) Subject to the following provisions of this regulation a person who before regulation 3(2) came into force was entitled to attendance allowance in respect of a child shall, after 5th April 1992 be regarded for the purposes of regulation 43 of the Claims and Payments Regulations as the person appointed on behalf of that child.

(2) An appointment having effect in accordance with paragraph (1) may be terminated when the child attains the age of 16 or ceases to be entitled to disability living allowance, or in accordance with regulation 43 of the Claims and Payments Regulations.

(3) Where on 5th April 1992 a person holds an appointment in respect of a child under regulation 43 of the Claims and Payments Regulations (mobility allowance) and that person is

different from the person mentioned in paragraph (1) as being entitled to an attendance allowance in respect of that same child, then that appointment shall terminate on 6th April 1992 and the Secretary of State shall make a new appointment under regulation 43 of the Claims and Payments Regulations to take effect on that day.

(4) The day specified in this regulation is the day that both payments of disability living allowance are combined into one payment pursuant to regulation 26.

(5) In this regulation, the “Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(17).

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

18th December 1991

Nicholas Scott
Minister of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument contains the first regulations made under section 5 of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 5). Section 5 enables the Secretary of State to make regulations on matters arising from the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board. The instrument contains other regulations which are consequential upon the provisions made under section 5.

The instrument is made before the end of the period of 6 months beginning with the coming into force of section 5 of the 1991 Act. The Regulations contained in this instrument are accordingly exempt 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 reference to the Social Security Advisory Committee and have not been so referred.

Part I of the Regulations relates to their citation, commencement and interpretation.

Part II relates to the replacement of attendance allowance with disability living allowance. Regulation 2 provides for the termination and cancellation of awards of attendance allowance current at 6th April 1992 and regulation 3 provides for their replacement by awards of disability living allowance. Regulation 4 relates to the adjudication of claims for attendance allowance in the period before 6th April 1992. Regulation 5 enables an adjudication officer where a claim for attendance allowance has been rejected to award, in certain circumstances, the lowest of the three rates of the care component of disability living allowance. Regulation 6 provides that a person aged 65 or over with an award of attendance allowance may, where they are also awarded the mobility allowance or disability living allowance, have the award of attendance allowance terminated and replaced with an award of the care component.

Part III relates to the replacement of mobility allowance with disability living allowance. Regulation 7 provides for the termination or cancellation of awards of mobility allowance and regulation 8 provides for their replacement by awards of the mobility component of disability living allowance. Regulation 9 makes provision where a person has an award of mobility allowance and makes a repeat claim for that allowance for a period commencing after 5th April 1992 or applies for a decision relating to mobility allowance to be reviewed. Regulation 10 enables an award of the lower rate mobility component to be made where the person's claim for mobility allowance is disallowed.

Part IV contains provisions common to both Parts II and III

Regulation 11 enables two separate awards of disability living allowance to co-exist.

Regulation 12 enables awards of disability living allowance to be backdated where the person delayed submitting a claim while the decision on a claim for attendance allowance or mobility allowance was awaited. Regulation 13 provides for the conversion of two awards of disability living allowance into a single award. Regulation 14 contains provisions relating to the review of awards of disability living allowance treated under these Regulations as having been made.

Part V relates to claims, payments and adjudication. Regulation 15 contains a definition of the expression "second tier adjudication" which is used only in this Part of the Regulations. Provision is included for claims for a single component of disability living allowance (regulation 16), claims treated as claims in addition (regulation 17) and claims treated as not being made (regulations 18 to 20). Regulations 21 to 25 provide for the determination of claims for attendance allowance and mobility allowance in the changeover period. Regulation 26 contains provisions about payment

of disability living allowance where the person previously had an award of mobility allowance or attendance allowance. Regulation 27 relates specifically to beneficiaries who are unable to act.