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STATUTORY INSTRUMENTS

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**1992 No. 3147**

**The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992**

**PART II**

**INCOME SUPPORT**

**Introduction of Residential Allowance**

- 2.—(1) In the Income Support Regulations—
- (a) in paragraph (1) of regulation 2 (interpretation), there shall be inserted at the appropriate places—
    - ““preserved right” means a preserved right for the purpose of regulation 19;
    - “residential allowance” means the weekly amount determined in accordance with paragraph 2A of Schedule 2;”;
  - (b) in paragraph (1) of regulation 17 (applicable amounts), after sub-paragraph (b), there shall be inserted the following sub-paragraph—
    - “(bb) an amount in respect of himself, or where the claimant is a member of a family, an amount in respect of any member of the family aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);”;
  - (c) in paragraph (1) of regulation 18<sup>MI</sup> (polygamous marriages), after sub-paragraph (c), there shall be inserted the following sub-paragraph—
    - “(cc) an amount, whether in respect of the claimant or any member of his household aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);”;
  - (d) in Part I of Schedule 2, after paragraph 2, there shall be inserted the following paragraph—
    - “**2A.**—(1) The weekly amount for the purposes of regulation 17(1)(bb) and 18(1)(cc) (residential allowance) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be—
      - (a) except in a case to which head (b) applies, £45.00; and
      - (b) where the home in which the person resides is situated within the area described in Schedule 3C (the Greater London area), £50.00.
    - (2) Subject to sub-paragraphs (3) and (4), the conditions are—
      - (a) the person resides in a residential care home or a nursing home and for this purpose a person shall be regarded as residing in such a home during any period of absence from the home which does not exceed 6 days;
      - (b) he does not have a preserved right;

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- (c) he is aged 16 or over;
- (d) both the person's accommodation and such meals (if any) as are provided for him are provided on a commercial basis; and
- (e) no part of the weekly charge for accommodation is met by housing benefit.

(3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides—

- (a) is registered under Part I of the Registered Homes Act 1984 or is deemed to be so registered by virtue of section 2(3) of the Registered Homes (Amendment) Act 1991 (registration of small homes where application for registration not determined);
- (b) is managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament (other than a social services authority) and provides both board and personal care for the claimant; or
- (c) is in Scotland and is registered under section 61 of the Social Work (Scotland) Act 1968 or is an establishment provided by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988 which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act 1968;

and a person resides in a nursing home where the home in which he resides is such a home for the purposes of regulation 19.

(4) A person shall not be regarded as residing in a nursing home for the purposes of sub-paragraph (2) where the home in which he resides is a hospice, and for this purpose "hospice" means a nursing home which—

- (a) if situate in England or Wales, is registered under Part II of the Registered Homes Act 1984, or
- (b) if situate in Scotland, is exempted from the operation of the Nursing Homes Registration (Scotland) Act 1938 by virtue of section 6 of that Act,

and which provides nursing for persons resident therein who suffer from a progressive disease and for whom the purpose of treatment is palliative.

(5) Where—

- (a) a person has been registered under the Registered Homes Act 1984 in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home; and
- (b) an application for registration under that Act has been made by another person and that application has not been determined or abandoned,

then any question arising for determination under this paragraph shall be determined as if the most recent registration under that Act in respect of those premises continued until the day on which the application is determined or abandoned.”.

(2) Schedule 1, which contains amendments of the Income Support Regulations consequential upon the introduction of a residential allowance, shall have effect.

(3) Schedule 2, which inserts a new Schedule 3C into the Income Support Regulations, shall also have effect.

#### Marginal Citations

**M1** The relevant amending instrument is [S.I. 1988/1228](#).

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 7(4)(za) inserted by [S.I. 1993/518 reg. 4\(2\)\(a\)](#)
- reg. 8(4)(za) inserted by [S.I. 1993/518 reg. 4\(3\)\(a\)](#)