
STATUTORY INSTRUMENTS

1994 No. 1779

SOCIAL SECURITY

The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 1994

<i>Made</i>	- - - -	<i>5th July 1994</i>
<i>Laid before Parliament</i>		<i>11th July 1994</i>
<i>Coming into force</i>	- -	<i>1st August 1994</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 67(2), 72(8), 73(5), 122(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992⁽¹⁾ and sections 73(1), 189(1) and (4) and 191 of the Social Security Administration Act 1992⁽²⁾, and of all other powers enabling him in that behalf, and after agreement by the Social Security Advisory Committee that the proposals to make these Regulations need not be referred to it⁽³⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 1994 and shall come into force on 1st August 1994.

(2) In these Regulations—

“the Attendance Allowance Regulations” means the Social Security (Attendance -Allowance) Regulations 1991⁽⁴⁾; and

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations 1991⁽⁵⁾.

Amendment of the Attendance Allowance Regulations

2.—(1) The Attendance Allowance Regulations shall be amended in accordance with the following provisions of this regulation and in this regulation a reference to a numbered regulation is a reference to the regulation in those Regulations which bears that number.

(1) 1992 c. 4. Section 122(1) is cited for the meaning assigned to the word “prescribe”.

(2) 1992 c. 5. Section 191 is cited for the meaning assigned to the word “prescribe”.

(3) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992.

(4) S.I. 1991/2740: the relevant amending instruments are S.I. 1992/703, 2869 and 3147 and S.I. 1993/518.

(5) S.I. 1991/2890: the relevant amending instruments are S.I. 1992/663 and 3147 and S.I. 1993/518 and 1939.

- (2) In regulation 7 (persons in certain accommodation other than hospitals)—
- (a) in paragraph (1)(6) for the words “regulation 8” there shall be substituted the words “regulations 7A and 8”;
 - (b) in paragraph (3)(b)(7) for the words from “, and has a preserved right” to “Regulations 1992” there shall be substituted the words “, and is a person to whom regulation 7A applies”; and
 - (c) in paragraph (4A)(8) for the words from “who does not have a preserved right” to “Regulations 1992” there shall be substituted the words “to whom regulation 7A does not apply”.
- (3) After regulation 7 there shall be inserted the following regulation—

“Persons to whom regulations 7 and 8 apply with modifications

7A.—(1) This regulation applies where a person satisfies paragraph 1 or paragraph 2 of the Schedule to these Regulations.

(2) Where this regulation applies—

- (a) regulation 7 shall have effect as if after paragraph (1) there were inserted the following paragraph—

“**(1A)** Paragraph (1)(b), in so far as it relates to enactments relating to persons under a disability not referred to in sub-paragraph (a), and paragraph (1)(c) shall not apply in the case of a person who is terminally ill where the Secretary of State has been informed of that fact—

- (a) on a claim for an attendance allowance;
- (b) on an application for review of an award of attendance allowance; or
- (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, attendance allowance.”; and

(b) regulation 8 shall have effect as if—

- (i) in paragraph (1) for the words “subject to the following provisions of this regulation” there were substituted the words “subject to paragraph (3)”;
- (ii) paragraphs (4) to (7)(9) were omitted.”

(4) After regulation 8 (exemption from regulations 6 and 7) there shall be inserted the following regulations—

“Adjustment of allowance where medical expenses are paid from public funds under war pensions instruments

8A.—(1) In this regulation—

“**article 25B**” means article 25B of the Personal Injuries (Civilians) Scheme 1983(10) (medical expenses) and includes that article as applied by article 48B of that Scheme;

“**article 26**” means article 26 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(11) (medical expenses); and

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- (6) Paragraph (1) has been amended by regulation 3(2)(a) and (b) of S.I. 1992/2869 and regulation 2(2)(a) of S.I. 1993/518.
- (7) Paragraph (3)(b) has been amended by regulation 2(2)(c) of S.I. 1993/518.
- (8) Paragraph (4A) was added by regulation 2(2)(d) of S.I. 1993/518.
- (9) Paragraphs (4) to (6) were inserted by regulation 8(2)(b) of S.I. 1992/3147. Those paragraphs were amended, and paragraph (7) inserted, by regulation 2(3) of S.I. 1993/518.
- (10) S.I. 1983/686: article 25B was inserted by article 6 of S.I. 1984/1289 and amended by article 7 of S.I. 1993/480; article 48B was added by article 11 of S.I. 1984/1289.
- (11) S.I. 1983/883: there are amendments which are not relevant for the purposes of this instrument.

in this regulation and regulation 8B “relevant accommodation” means accommodation provided as a necessary ancillary to nursing care where the medical expenses involved are wholly borne by the Secretary of State pursuant to article 25B or article 26.

(2) This regulation applies where a person is provided with relevant accommodation.

(3) Subject to regulation 8B, where this regulation applies and there are payable in respect of a person both a payment under either article 25B or article 26 and an attendance allowance, the allowance shall be adjusted by deducting from it the amount of the payment under article 25B or article 26, as the case may be, and only the balance shall be payable.

Exemption from regulation 8A

8B.—(1) Regulation 8A shall not, subject to the following provisions of this regulation, apply to a person in respect of the first 28 days of any period during which the amount of any attendance allowance would be liable to be adjusted by virtue of regulation 8A(3).

(2) For the purposes of paragraph (1) two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the aggregate of such distinct periods and ending on the last day of the later or last such period.

(3) For the purposes of this paragraph a day is a relevant day in relation to a person if it fell not earlier than 28 days before the first day on which he was provided with relevant accommodation; and either—

- (a) was a day when he was undergoing medical treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 6; or
- (b) was a day when he was, or would but for regulation 8 have been, prevented from receiving an attendance allowance by virtue of regulation 7(1);

and where there is in relation to a person a relevant day, paragraph (1) shall have effect as if for “28 days” there were substituted such lesser number of days as is produced by subtracting from 28 the number of relevant days in his case.”

(5) There shall be added to the Attendance Allowance Regulations the Schedule set out as Schedule 1 to these Regulations.

Amendment of the Disability Living Allowance Regulations

3.—(1) The Disability Living Allowance Regulations shall be amended in accordance with the following provisions of this regulation and in this regulation a reference to a numbered regulation is a reference to the regulation in the Disability Living Allowance Regulations which bears that number.

(2) In regulation 9 (persons in certain accommodation other than hospitals)—

- (a) in paragraph (1)(**12**) for the words “regulation 10” there shall be substituted the words “regulations 9A and 10”;
- (b) in paragraph (4)(c)(**13**) for the words from “, and has a preserved right” to “Regulations 1992” there shall be substituted the words “, and is a person to whom regulation 9A applies”; and
- (c) in paragraph (5A)(**14**) for the words from “who does not have a preserved right” to “Regulations 1992” there shall be substituted the words “to whom regulation 9A does not apply”.

(12) Paragraph (1) has been amended by regulation 5(2) of S.I. 1992/2869 and regulation 3(2)(a) of S.I. 1993/518.

(13) Paragraph (4) was amended by regulation 3(2)(b) of S.I. 1993/518.

(14) Paragraph (5A) was inserted by regulation 3(2)(d) of S.I. 1993/518.

(3) After regulation 9 there shall be inserted the following regulations—

“Persons to whom regulations 9 and 10 apply with modifications

9A.—(1) This regulation applies where a person satisfies paragraph 1 or paragraph 2 of Schedule 3 to these Regulations.

(2) Where this regulation applies—

(a) regulation 9 shall have effect as if after paragraph (2A)(15) there were inserted the following paragraph—

“(2B) Paragraph (1)(b), in so far as it relates to enactments relating to persons under a disability or to education or training not referred to in sub-paragraph (a), and 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 a disability living allowance which is attributable to the care component;
- (b) on an application for a review of an award of disability living allowance which is attributable to the care component; or
- (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, the care component of a disability living allowance.”; and

(b) regulation 10(16) (exemption from regulations 8 and 9) shall have effect as if—

- (i) in paragraph (1) for the words “subject to the following provisions of this regulation” there were substituted the words “subject to paragraphs (2) and (3)”;
- (ii) paragraphs (6) to (9) were omitted.”.

(4) After regulation 10 there shall be inserted the following regulations—

“Adjustment of allowance where medical expenses are paid from public funds under war pensions instruments

10A.—(1) In this regulation—

“article 25B” means article 25B of the Personal Injuries (Civilians) Scheme 1983(17) (medical expenses) and includes that article as applied by article 48B of that Scheme;

“article 26” means article 26 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(18) (medical expenses);

and in this regulation and regulation 10B “relevant accommodation” means accommodation provided as a necessary ancillary to nursing care where the medical expenses involved are wholly borne by the Secretary of State pursuant to article 25B or article 26.

(2) This regulation applies where a person is provided with relevant accommodation.

(3) Subject to regulation 10B, where this regulation applies and there are payable in respect of a person both a payment under article 25B or article 26 and a disability living allowance which is attributable to the care component, the allowance, in so far as it is so attributable,

(15) Paragraph (2A) was inserted by regulation 2(3)(c) of S.I. 1992/633.

(16) Regulation 10 has been amended: the relevant amending instruments are S.I. 1992/633, 3147 and 1993/518.

(17) S.I. 1983/686: article 25B was inserted by article 6 of S.I. 1984/1289 and amended by article 7 of S.I. 1993/480; article 48B was inserted by article 11 of S.I. 1984/1289.

(18) S.I. 1983/883: there are amendments which are not relevant for the purposes of this instrument.

shall be adjusted by deducting from it the amount of the payment under article 25B or article 26, as the case may be, and only the balance shall be payable.

Exemption from regulation 10A

10B.—(1) Regulation 10A shall not, subject to the following provisions of this regulation, apply to a person in respect of the first 28 days of any period during which the amount of any disability living allowance attributable to the care component would be liable to be adjusted by virtue of regulation 10A(3).

(2) For the purposes of paragraph (1) two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the aggregate of such distinct periods and ending on the last day of the later or last such period.

(3) For the purposes of this paragraph a day is a relevant day in relation to a person if it fell not earlier than 28 days before the first day on which he was provided with relevant accommodation; and either—

- (a) was a day when he was undergoing medical treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 8; or
- (b) was a day when he was, or would but for regulation 10 have been, prevented from receiving a disability living allowance attributable to the care component by virtue of regulation 9(1);

and where there is in relation to a person a relevant day, paragraph (1) shall have effect as if for “28 days” there were substituted such lesser number of days as is produced by subtracting from 28 the number of relevant days in his case.”

(5) In regulation 12(2) (entitlement to the mobility component in the case of the blind and deaf) after the words “loss of hearing” there shall be inserted the words “when using any artificial aid which he habitually uses or which is suitable in his case”.

(6) There shall be added to the Disability Living Allowance Regulations as Schedule 3 the Schedule which is set out as Schedule 2 to these Regulations.

Revocations

4. The following provisions are revoked—

- (a) paragraphs (3) to (6) of regulation 7 and paragraphs (3) to (6) of regulation 8 of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992(19); and
- (b) regulation 4 of the Social Security Benefits (Miscellaneous Amendments)(20).

(19) S.I. 1992/3147: the relevant amending instrument is S.I. 1993/518.

(20) S.I. 1993/518.

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

5th July 1994

Nicholas Scott
Minister of State,
Department of Social Security

SCHEDULE 1

Regulation 2(5)

SCHEDULE TO BE INSERTED IN THE ATTENDANCE ALLOWANCE REGULATIONS

“SCHEDULE

Regulation 7A(1)

PERSONS TO WHOM REGULATIONS 7 AND 8 APPLY WITH MODIFICATIONS

1. Subject to paragraph 3, this paragraph is satisfied in relation to a person if—
 - (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984⁽²¹⁾ as a residential care home or a nursing home; or
 - (b) on 31st March 1993, he was—
 - (i) entitled either to—
 - (aa) an attendance allowance, or
 - (bb) income support and his applicable amount was calculated in accordance with regulation 19 of the Income Support (General) Regulations 1987⁽²²⁾ (persons in residential care and nursing homes); and
 - (ii) living in a home which was not registered under the Registered Homes Act 1984 but which on 1st April 1993 was required to be registered under that Act as a residential care home by virtue of the amendments made to it by the Registered Homes (Amendment) Act 1991⁽²³⁾ (which extends registration to small homes); or
 - (c) he would have been living in a home such as is mentioned in either of the preceding subparagraphs on that date but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
 - (ii) where throughout the period of his absence he was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975⁽²⁴⁾, 52 weeks.
2. Subject to paragraph 3, this paragraph is satisfied in relation to a person if—
 - (a) on 31st March 1993 he was—
 - (i) entitled to—
 - (aa) an attendance allowance or the care component of a disability living allowance; or
 - (bb) income support and his applicable amount was calculated in accordance with regulation 19 of the Income Support (General) Regulations 1987 (persons in residential care and nursing homes); and
 - (ii) living in a home which was not registered under the Registered Homes Act 1984 and which would on 1st April 1993 have become registrable under that Act but for the provisions of section 1(4) of that Act as substituted by the Registered Homes (Amendment) Act 1991 (which provides that small homes need not be registered if

(21) 1984 c. 23.

(22) S.I. 1987/1967: the relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1991/1033, 1992/3147 and 1993/2119.

(23) 1991 c. 20.

(24) See regulation 2(2) of S.I. 1975/555, as amended by S.I. 1987/1683.

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all of the residents are, or are treated for the purposes of the Act as being, relatives of the proprietor); or

- (b) he would have been living in such a home on 31st March 1993 but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
 - (ii) where throughout the period of his absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975, 52 weeks,

and in either case he is either resident in the home on 1st August 1994 or would be so resident but for such an absence as is mentioned in paragraph (b), or has been continuously resident, disregarding any such absence, in residential accommodation to which the Registered Homes Act 1984 applies, or would apply but for section 1(4) of that Act, since 1st April 1993.

3. Paragraphs 1 and 2 shall cease to apply to a person where he is absent from a home such as is mentioned in paragraph 1(a) or (b), or 2(a) and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks, where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975.

4. For the purposes of this Schedule a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.”

SCHEDULE 2

Regulation 3(6)

SCHEDULE TO BE ADDED TO THE DISABILITY LIVING ALLOWANCE REGULATIONS

“SCHEDULE 3

Regulation 9A(1)

PERSONS TO WHOM REGULATIONS 9 AND 10 APPLY WITH MODIFICATIONS

- 1. Subject to paragraph 3, this paragraph is satisfied in relation to a person if—
 - (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984(25) as a residential care home or a nursing home; or
 - (b) on 31st March 1993, he was—
 - (i) entitled either to—
 - (aa) the care component of a disability living allowance, or

(25) 1984 c. 23.

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- (bb) income support and his applicable amount was calculated in accordance with(26) (persons in residential care and nursing homes); and
 - (ii) living in a home which was not registered under the Registered Homes Act 1984 but which on 1st April 1993 was required to be registered under that Act as a residential care home by virtue of the amendments made to it by the Registered Homes (Amendment) Act 1991(27) (which extends registration to small homes); or
 - (c) he would have been living in a home such as is mentioned in either of the preceding subparagraphs on that date but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
 - (ii) where throughout the period of his absence he was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(28), 52 weeks.
2. Subject to paragraph 3, this paragraph is satisfied in relation to a person if—
- (a) on 31st March 1993 he was—
 - (i) entitled to—
 - (aa) the care component of a disability living allowance; or
 - (bb) income support and his applicable amount was calculated in accordance with regulation 19 of the Income Support (General) Regulations 1987 (persons in residential care and nursing homes); and
 - (ii) living in a home which was not registered under the Registered Homes Act 1984 and which would on 1st April 1993 have become registrable under that Act but for the provisions of section 1(4) of that Act as substituted by the Registered Homes (Amendment) Act 1991 (which provides that small homes need not be registered if all of the residents are, or are treated for the purposes of the Act as being, relatives of the proprietor); or
 - (b) he would have been living in such a home on 31st March 1993 but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
 - (ii) where throughout the period of his absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975, 52 weeks,
- and in either case he is either resident in the home on 1st August 1994 or would be so resident but for such an absence as is mentioned in paragraph (b), or has been continuously resident, disregarding any such absence, in residential accommodation to which the

(26) S.I. 1987/1967: the relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1991/1033, 1992/3147 and 1993/2119.

(27) 1991 c. 20.

(28) See regulation 2(2) of S.I. 1975/555, as amended by S.I. 1987/1683.

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Registered Homes Act 1984 applies, or would apply but for section 1(4) of that Act, since 1st April 1993.

3. Paragraphs 1 and 2 shall cease to apply to a person where he is absent from a home such as is mentioned in paragraph 1(a) or (b), or 2(a) and that absence exceeds a period of—

(a) except in a case to which sub-paragraph (b) applies—

(i) 4 weeks, where the person was before his absence a temporary resident in the home,

(ii) 13 weeks, where the person was before his absence a permanent resident in the home;
or

(b) 52 weeks, where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975.

4. For the purposes of this Schedule a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Disability Living Allowance) Regulations 1991 (S.I.1991/2890) and the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740).

The principal effects of the amendments are—

(1) to make separate provision in respect of the payability of both attendance allowance and the care component of a disability living allowance in the case of a person who was ordinarily resident (or would have been so resident but for a period of temporary absence) in a residential care home on 31st March 1993 which was not registered under the Registered Homes Act 1984 on that date and did not need to be registered on 1st April 1993 because all of the people resident there were, or were treated by virtue of section 19 of the 1984 Act as being, relatives of the proprietor; and who is either still resident there at the coming into force of these Regulations, or has been continuously resident (disregarding temporary absences) in residential accommodation since 1st April 1993;

(2) to require any payment of either attendance allowance or the care component of a disability living allowance to be adjusted in respect of any payment made under either article 25B of the Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686) (“article 25B”) or article 26 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (S.I. 1983/883) (“article 26”) when he is provided with nursing care and ancillary accommodation and his medical expenses are being wholly met by the Secretary of State under article 25B or article 26; and

(3) to require adjudicating authorities to have regard to the extent to which a person’s deafness is relieved by the use of a hearing aid when deciding whether they are entitled to the mobility component of a disability living allowance by reason of being both blind and deaf.

The Regulations also make other consequential and minor amendments.

These Regulations do not impose a charge on business.

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