
STATUTORY INSTRUMENTS

1997 No. 1839

SOCIAL SECURITY

**The Social Security (Attendance Allowance
and Disability Living Allowance)
(Miscellaneous Amendments) Regulations 1997**

Made - - - - 28th July 1997
Laid before Parliament 30th July 1997
Coming into force - - 25th August 1997

The Secretary of State for Social Security, in exercise of the powers conferred by sections 30(3), 35(2), 57A, 61(1)(a)(ii) and (b) and (2), 189(4), (5) and (6) and 191 of the Social Security Administration Act 1992(1) and of all other powers enabling her in that behalf, by this instrument which contains only regulations made by virtue of, or consequential upon, section 18 of the Social Security Administration (Fraud) Act 1997(2) and which is made before the end of the period of 6 months beginning with the coming into force of that Act(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) (Miscellaneous Amendments) Regulations 1997 and shall come into force on 25th August 1997.

(2) In these Regulations, unless the context otherwise requires—

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1995(4);

“the Attendance Allowance Regulations” means the Social Security (Attendance Allowance) Regulations 1991(5);

-
- (1) 1992 c. 5. Section 57A was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 18. Section 191 is cited because of the meaning assigned to the word “prescribe”.
- (2) 1997 c. 47.
- (3) See the Social Security Administration Act 1992 (c. 5), section 173(5)(b). This provides that regulations made by virtue of, or consequential upon, an enactment which is made before the end of six months from the coming into force of that enactment are not required to be referred to the Social Security Advisory Committee.
- (4) S.I. 1995/1801, to which there are amendments not relevant to these Regulations.
- (5) S.I. 1991/2740, to which there are amendments not relevant to these Regulations.

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations 1991⁽⁶⁾.

Insertion of new regulations in the Attendance Allowance Regulations

2. After regulation 8B of the Attendance Allowance Regulations⁽⁷⁾ (exemption from regulation 8A) there shall be inserted—

“Medical examination in prescribed circumstances

8C.—(1) The prescribed circumstances in which a person who is awarded attendance allowance shall be required to attend for, or submit himself to, a medical examination, are where the Secretary of State is undertaking an investigation under section 30(7A) of the Social Security Administration Act 1992⁽⁸⁾.

(2) An examination under paragraph (1) shall be conducted by a medical practitioner who is—

- (a) approved by the Secretary of State; or
- (b) engaged by an organisation approved by the Secretary of State.

Withholding of benefit in prescribed circumstances

8D.—(1) Subject to paragraph (2), where a person who is receiving attendance allowance is required by the Secretary of State to attend for, or submit to, a medical examination under regulation 8C and fails to comply with that requirement on more than one occasion, that allowance may be withheld, in whole or in part, from a date, not earlier than the second occasion, as the Secretary of State shall determine.

(2) Paragraph (1) shall not apply where—

- (a) a person who is required to attend for, or submit to, a medical examination proves to the satisfaction of the Secretary of State that he has good cause for failing to comply with the requirement to attend for, or submit himself to, medical examination;
- (b) a person who is required to attend for, or submit to, a medical examination produces such evidence as is acceptable to the Secretary of State in place of a medical examination; or
- (c) the Secretary of State otherwise has available to him such evidence as is acceptable to him.

(3) For the purposes of paragraph (2)(a), the matters which are to be taken into account in determining whether a person has good cause shall include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability from which he suffers.

⁽⁶⁾ S.I. 1991/2890, to which there are amendments not relevant to these Regulations.

⁽⁷⁾ S.I. 1991/2740. Regulations 8A and 8B were inserted by S.I. 1994/1779.

⁽⁸⁾ 1992 c. 5. Section 30(7A) was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 17(1).

Payment of withheld benefit

8E.—(1) Where the Secretary of State is satisfied that no question arises in connection with his investigation referred to in regulation 8C(1), payment of the amount withheld and the attendance allowance shall be made forthwith.

(2) Where a question arose in connection with an investigation referred to in regulation 8C(1) in respect of which—

- (a) the Secretary of State made an application for the review of a person’s entitlement to attendance allowance under section 30 of the Social Security Administration Act 1992⁽⁹⁾; and
- (b) an adjudication officer has made a determination;

payment of the attendance allowance shall be made in accordance with the adjudication officer’s determination, on review, of the person’s entitlement.

(3) Where paragraph (1) or (2) does not apply and attendance allowance is withheld under regulation 8D for a period of more than 3 months, the Secretary of State shall—

- (a) make, with a view to review, an application to the adjudication officer on the ground that the person failed to attend for, or submit himself to, medical examination; and
- (b) make such payments as are determined, on review, by the adjudication officer.”.

Insertion of new regulations in the Disability Living Allowance Regulations

3. After Regulation 5 of the Disability Living Allowance Regulations (late claim by a person previously entitled) there shall be inserted—

“Medical examination in prescribed circumstances

5A.—(1) The prescribed circumstances in which a person who is awarded disability living allowance shall be required to attend for, or submit himself to, a medical examination, are where the Secretary of State is undertaking an investigation under section 30(7A) of the Administration Act⁽¹⁰⁾.

(2) An examination under paragraph (1) shall be conducted by a medical practitioner who is—

- (a) approved by the Secretary of State; or
- (b) engaged by an organisation approved by the Secretary of State.

Withholding of benefit in prescribed circumstances

5B. –

(1) Subject to paragraph (2), where a person who is receiving disability living allowance is required by the Secretary of State, to attend for, or submit to, a medical examination under regulation 5A and fails to comply with that requirement on more than one occasion, that allowance may be withheld, in whole or in part, from a date, not earlier than the second occasion, as the Secretary of State shall determine.

(2) Paragraph (1) shall not apply where—

- (a) a person who is required to attend for, or submit to, a medical examination proves to the satisfaction of the Secretary of State that he has good cause for

⁽⁹⁾ 1992 c. 5.

⁽¹⁰⁾ 1992 c. 5. Section 30(7A) was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 17(1).

failing to comply with the requirement to attend for, or submit himself to, medical examination;

- (b) a person who is required to attend for, or submit to, a medical examination produces such evidence as is acceptable to the Secretary of State in place of a medical examination; or
- (c) the Secretary of State otherwise has available to him such evidence as is acceptable to him.

(3) For the purposes of paragraph (2)(a), the matters which are to be taken into account in determining whether a person has good cause shall include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability from which he suffers.

Payment of withheld benefit

5C. –

(1) Where the Secretary of State is satisfied that no question arises in connection with his investigation referred to in regulation 5A(1), payment of the amount withheld and the disability living allowance shall be made forthwith.

(2) Where a question arose in connection with an investigation referred to in regulation 5A(1) in respect of which—

- (a) the Secretary of State made an application for the review of a person's entitlement to disability living allowance under section 30 of the Administration Act; and
- (b) an adjudication officer has made a determination;

payment of the disability living allowance shall be made in accordance with the adjudication officer's determination, on review, of the person's entitlement.

(3) Where paragraph (1) or (2) does not apply and disability living allowance is withheld under regulation 5B for a period of more than 3 months, the Secretary of State shall—

- (a) make, with a view to review, an application to the adjudication officer on the ground that the person failed to attend for, or submit himself to, medical examination; and
- (b) make such payments as are determined, on review, by the adjudication officer.”.

Insertion of new regulation in the Adjudication Regulations

4. After regulation 67 of the Adjudication Regulations (review in social fund maternity, funeral or heating expenses cases) there shall be inserted—

“Review in attendance allowance and disability living allowance cases

67A.—(1) Failure by a person to attend for, or submit to, a medical examination under the provisions made under section 57A of the Administration Act⁽¹¹⁾ (medical examinations) is prescribed as a relevant change of circumstances for the purposes of section 30(2)(b) or 35(1)(b) of the Administration Act (review on the grounds of relevant change of circumstances).

(11) 1992 c. 5. Section 57A was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 18.

(2) In the case where an award of attendance allowance or disability living allowance falls to be reviewed under section 30(2)(b) or 35(1)(b) of the Administration Act (review on the grounds of relevant change of circumstances) in the circumstances prescribed under paragraph (1), the decision given on review shall have effect from the date determined by the Secretary of State under regulation 8D(1) of the Social Security (Attendance Allowance) Regulations 1991⁽¹²⁾ or regulation 5B(1) of the Social Security (Disability Living Allowance) Regulations 1991⁽¹³⁾, as the case may be.”.

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

28th July 1997

Patricia Hollis
Parliamentary Under-Secretary of State,
Department of Social Security

⁽¹²⁾ S.I. 1991/2740. Regulation 8D was inserted by S.I. 1997/1839.

⁽¹³⁾ S.I. 1991/2890. Regulation 5B was inserted by S.I. 1997/1839.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Social Security (Attendance Allowance) Regulations 1991 (S.I.1991/2740) (“the Attendance Allowance Regulations”), the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) (“the Disability Living Allowance Regulations”) and the Social Security (Adjudication) Regulations 1995 (S.I. 1995/1801) (“the Adjudication Regulations”).

These Regulations make provision in the Attendance Allowance Regulations and the Disability Living Allowance Regulations so that a person awarded attendance allowance or disability living allowance may be required to submit to a medical examination, and where he fails without good cause to do so, for benefit to be withheld (regulations 2 and 3); and make provision in the Adjudication Regulations to enable the adjudication officer to treat failure to attend for, or submit to, a medical examination in attendance allowance and disability living allowance cases as a relevant change of circumstances (regulation 4).

These Regulations do not impose a charge on business.