

2007 No. 2875

SOCIAL SECURITY

The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007

<i>Made</i>	- - - -	<i>2nd October 2007</i>
<i>Laid before Parliament</i>		<i>8th October 2007</i>
<i>Coming into force</i>	- -	<i>29th October 2007</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 67(2), 72(8) and 175 of the Social Security Contributions and Benefits Act 1992(a).

This instrument contains only regulations made consequential upon section 60 of the Welfare Reform Act 2007(b) and is made before the end of the period of 6 months beginning with the coming into force of that section(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 and shall come into force on 29th October 2007.

(2) In these Regulations—

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

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

Amendment of the Social Security (Attendance Allowance) Regulations 1991

2.—(1) The Attendance Allowance Regulations shall be amended as follows.

(a) 1992 c. 4. Sections 67(2) and 72(8) were amended by section 60 of the Welfare Reform Act 2007 (c. 5).

(b) 2007 c. 5.

(c) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

(d) S.I. 1991/2740. Regulation 7 of the Attendance Allowance Regulations has been amended on a number of occasions. However, given that that regulation is substituted in its entirety by regulation 3 of these Regulations, none are relevant. Regulation 8 of the Attendance Allowance Regulations has been amended by S.I. 1992/703, 1992/3147, 1993/518, 1996/1345, 1999/2860, 2000/1401, 2002/3019, 2003/2259. Other amendments which are not relevant to these Regulations have been made to the Attendance Allowance Regulations.

(e) S.I. 1991/2890. Regulation 9 of the Disability Living Allowance Regulations has been amended on a number of occasions. However, given that that regulation is substituted in its entirety by regulation 6 of these Regulations, none are relevant. Regulation 10 of the Disability Living Allowance Regulations has been amended by S.I. 1992/633, 1992/3147, 1993/518, 1996/1345, 1999/2860, 2000/1401, 2002/208, 2002/3019, 2003/2259. Other amendments which are not relevant to these Regulations have been made to the Disability Living Allowance Regulations.

(2) For regulation 7 (persons in certain accommodation other than hospitals) substitute—

“Persons in care homes

7.—(1) Subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—

- (a) (i) Part III of the National Assistance Act 1948(a),
- (ii) Part IV of the Social Work (Scotland) Act 1968(b),
- (iii) the Mental Health (Care and Treatment) (Scotland) Act 2003(c),
- (iv) the Community Care and Health (Scotland) Act 2002(d),
- (v) the Mental Health Act 1983(e), or
- (b) any other enactment relating to persons under disability.

(3) In this regulation, and in regulation 8, references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person in a private dwelling; or
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
- (c) improvements made to, or furniture or equipment provided for, a care home in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature; or

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- (a) 1948 c. 29. Part III of the 1948 Act has been amended on numerous occasions not all of which are relevant to these Regulations. The main amendments which are relevant to these Regulations are as follows. Section 21 of the 1948 Act (duty of local authorities to provide accommodation) was amended by the Local Government Act 1972 (c. 70), section 195 and Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), section 20(4) and the Schedule; the Children Act 1989 (c. 41), section 108(5) and Schedule 13, paragraph 11(1); the National Health Service and the Community Care Act 1990 (c. 19), sections 42(1) and 66(1) and Schedule 9, paragraphs 5(1), (2) and (3); the Community Care (Residential Accommodation) Act 1998 (c. 19), section 1 (as substituted by the Health and Social Care Act 2001 (c. 15), section 53); and the National Health Service (Consequential Provisions) Act 2006 (c. 43), section 2 and Schedule 1, paragraphs 5 and 6. Section 22 of the 1948 Act (charges to be made for accommodation) was amended by the Social Security Act 1980 (c. 30), sections 20 and 21 and Schedule 4, paragraph 2 and Schedule 5, Part II; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1); the Social Security Act 1986 (c. 50), Schedule 10, Part II, paragraph 32; and the National Health Service and Community Care Act 1990, sections 44, 66(2) and Schedule 10. Section 26 of the 1948 Act (provision of accommodation in premises maintained by voluntary organisations) was amended by the Health Services and Public Health Act 1968 (c. 46), sections 44 and 78 and Schedule 4; the Local Government Act 1972 (c. 70), section 195, Schedule 23, paragraph 2(3); the Health and Social Services and Social Security Adjudications Act 1983, section 20; the National Health Service and Community Care Act 1990, sections 42 and 66 and Schedules 9 and 10; the Community Care (Residential Accommodation) Act 1992, section 1(1); the Care Standards Act 2000 (c. 14), sections 116 and 117 and Schedule 4, paragraph 1 and Schedule 6; and the National Health Service Reform and Health Care Professionals Act 2002 (c. 17), section 2, Schedule 2, Part 2, paragraph 38. Sections 29 (welfare arrangements for blind, deaf, dumb and crippled persons, etc) and 30 (voluntary organisations for disabled persons' welfare) of the 1948 Act were amended by the Mental Health (Scotland) Act 1960, sections 113(1) and 114 and Schedule 4; the Local Government Act 1972 sections 195, 272(1), Schedule 23, paragraph 2 and Schedule 30; the Employment and Training Act 1973, section 14(1) and Schedule 3, paragraph 3; the Health and Social Services and Social Security Adjudicators Act 1983, section 30 and Schedule 10, Part 1; the Children Act 1989, section 108(5), (6), Schedule 13, paragraph 11(2) and Schedule 14, paragraph 1; and the National Health Service and Community Care Act 1990, sections 42(6) and 44(7). Other amendments which are not relevant to these Regulations have been made to this Act.
- (b) 1968 c. 49. Part IV of the 1968 Act was largely repealed by section 80(1) of, and Schedule 4 to, the Regulation of Care (Scotland) Act 2001 (asp 8). Extant provision has been inserted and amended by the Children Act 1975 (c. 41); the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); the National Health Service and Community Care Act 1990 (c. 19); the Children (Scotland) Act 1995 (c. 36); and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13). Other amendments which are not relevant to these Regulations have been made to this Act.
- (c) 2003 asp 13. The 2003 Act was amended by the Civil Partnership Act 2004 (c. 33) and the Adult Support and Protection (Scotland) Act 2007 (asp 10). It has also been amended by S.S.I. 2004/533, 2005/465.
- (d) 2002 asp 5. The 2002 Act was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13). Other amendments which are not relevant to these Regulations have been made to this Act.
- (e) 1983 c. 20. Amendments which are not relevant to these Regulations have been made to this Act.

- (d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds; or
 - (e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
 - (f) services provided pursuant to the National Health Service Act 2006^(a), the National Health Service (Wales) Act 2006^(b), or the National Health Service (Scotland) Act 1978^(c).
- (4) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (5) and (6), be deemed—
- (a) to begin on the day after the day on which he enters a care home, and
 - (b) to end on the day before the day on which he leaves a care home.
- (5) Where a person enters a care home from a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.
- (6) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home.”.
- (3) For paragraph (6) of regulation 8 (exemption from regulations 6 and 7) substitute—
- “(6) Regulation 7 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with assistance from another person or a charity, or
 - (b) on his behalf by another person or a charity.”.

Amendment of the Social Security (Disability Living Allowance) Regulations 1991

- 3.—(1) The Disability Living Allowance Regulations shall be amended as follows.
- (2) For regulation 9 (persons in certain accommodation other than hospitals) substitute—

“Persons in care homes

9.—(1) Except in the cases specified in paragraphs (3) to (5), and subject to regulation 10, a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

- (2) The specified enactments for the purposes of paragraph (1) are—
- (a) (i) Part III of the National Assistance Act 1948,
 - (ii) Part IV of the Social Work (Scotland) Act 1968,
 - (iii) the Mental Health (Care and Treatment) (Scotland) Act 2003,
 - (iv) the Community Care and Health (Scotland) Act 2002,
 - (v) the Mental Health Act 1983; or

^(a) 2006 c. 41.
^(b) 2006 c. 42.
^(c) 1978 c. 29.

- (b) any other enactment relating to persons under disability or to young persons or to education or training.
- (3) Paragraph (2)(b) shall not apply in circumstances where any of the costs of the qualifying services provided for him are borne wholly or partly out of public or local funds by virtue of—
- (a) section 485 of the Education Act 1996(a), section 14 of the Education Act 2002(b) or section 73 of the Education (Scotland) Act 1980(c) (which relate to grants in aid of educational services);
 - (b) sections 1, 2 or 3 of the Education Act 1962(d) (which relate respectively to awards by local education authorities in respect of degree courses and further education and awards by the Secretary of State to persons undergoing teacher training or postgraduate courses) or sections 49 or 73 of the Education (Scotland) Act 1980 (which relate respectively to the power of education authorities to assist persons to take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others);
 - (c) section 65 of the Further and Higher Education Act 1992(e) or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005(f) (which relate respectively to the funding of further education and the administration of funds);
 - (d) section 1 of the Education (Student Loans) Act 1990(g) (which relates to student loans); or
 - (e) section 22 of the Teaching and Higher Education Act 1998(h).
- (4) Subject to paragraph (5), paragraphs (1) and (2) shall not apply in the case of a child who—
- (a) has not attained the age of 16 and is being looked after by a local authority; or
 - (b) has not attained the age of 18 and to whom—
 - (i) section 17(10)(b) of the Children Act 1989(i) or section 93(4)(a)(ii) of the Children (Scotland) Act 1995(j) (impairment of health and development) applies because his health is likely to be significantly impaired, or further impaired, without the provision of services for him, or
 - (ii) section 17(10)(c) of the Children Act 1989 (disability) or section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (disability) applies; or
 - (c) who is accommodated outside the United Kingdom and the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 320 of the Education Act 1996(k) or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004(l).

(a) 1996 c. 56.

(b) 2002 c. 32. Section 14 of the 2002 Act was amended by the Children Act 2004 (c. 31), section 59 and the Education Act 2005 (c. 18), section 98, Schedule 14, paragraph 23.

(c) 1980 c. 44. Section 73 of the 1980 Act was amended by the Self-Governing Schools etc (Scotland) Act 1989 (c. 39), the Teaching and Higher Education Act 1998 (c. 30) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

(d) 1962 c. 12. The 1962 Act was repealed by the Teacher and Higher Education Act 1998 (c. 21), section 44(2), Schedule 4. For transitional and savings provisions see S.I. 1998/3237, articles 3 and 4.

(e) 1992 c. 13.

(f) 2005 asp 6.

(g) 1990 c. 6. The 1990 Act was repealed by the Teaching and Further Education Act 1998, section 44(2) and Schedule 4 subject to transitional and saving provisions. For the transitional and saving provisions see S.I. 1998/2004, article 3.

(h) 1998 c. 30. Section 22 of the 1998 Act has been amended by the Learning and Skills Act 2000 (c. 21), section 146(1), (2)(a), the Income Tax (Earnings and Pensions) Act 2003, section 722, Schedule 6, Part 2, paragraph 236(b), the Higher Education Act 2004 (c. 8), sections 42, 43, 50 and Schedules 7 and 11.

(i) 1989 c. 41. Amendments which are not relevant to these Regulations have been made to section 17 of the 1989 Act.

(j) 1995 c. 36. Amendments which are not relevant to these Regulations have been made to section 93 of the 1995 Act.

(k) 1996 c. 56.

(l) 2004 asp 4.

(5) Sub-paragraphs (a) and (b) of paragraph (4) shall only apply during any period which the local authority looking after the child place him in a private dwelling with a family, or a relative of his, or some other suitable person.

(6) In this regulation and in regulation 10, references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person in a private dwelling; or
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
- (c) improvements made to, or furniture or equipment provided for, a care home in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature; or
- (d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds; or
- (e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
- (f) services provided pursuant to the National Health Service Act 2006, the National Health Service (Wales) Act 2006, or the National Health Service (Scotland) Act 1978.

(7) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (8) and (9), be deemed—

- (a) to begin on the day after the day on which he enters a care home, and
- (b) to end on the day before the day on which he leaves a care home.

(8) Where a person enters a care home from a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.

(9) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home ”.

(3) For paragraph (8) of regulation 10 (exemption from regulations 8 and 9) substitute—

“(8) Regulation 9 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—

- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with the assistance from another person or a charity, or
- (b) on his behalf by another person or a charity.”.

Transitional and saving provisions

4.—(1) The substitution by these Regulations of regulation 7 of the Attendance Allowance Regulations shall not prevent any day before the coming into force of these Regulations from being included in the first 28 day period to which regulation 8(1) of the Attendance Allowance Regulations refers.

(2) The substitution by these Regulations of regulation 9 of the Disability Living Allowance Regulations shall not prevent any day before the coming into force of these Regulations from being included in—

- (a) the first 28 day period to which regulation 10(1) of the Disability Living Allowance Regulations refers; or

- (b) the first 84 days to which regulation 10(2) of the Disability Living Allowance Regulations refers where that person has not attained the age of 16.

Signed by authority of the Secretary of State for Work and Pensions

2nd October 2007

James Plaskitt
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 60 of the Welfare Reform Act 2007 (c 5) makes amendments to the Social Security Contributions and Benefits Act 1992 (c 4) (“the 1992 Act”) replacing the current regulation-making powers (sections 67(2) and 72(8)) with new powers (sections 67(2)-(7) and 72(8)-(13)) to prescribe the circumstances in which Attendance Allowance or the care component of Disability Living Allowance shall not be paid to people resident in care homes.

Care home is defined in sections 67(3) and 72(9) of the 1992 Act as being an establishment that provides accommodation together with nursing or personal care.

These Regulations provide the circumstances in which an attendance allowance or the care component of a disability living allowance shall not be payable where a person is resident in a care home. The circumstances are where any of the costs of any qualifying services provided for a person in a care home are met, in whole or in part, out of public or local funds under a specified enactment. Qualifying services is defined in sections 67(4) and 72(10) of the 1992 Act as being the provision of accommodation, board or personal care.

Regulation 4 provides transitional and saving provisions.

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