
STATUTORY INSTRUMENTS

2007 No. 2875

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

Amendment of the Social Security (Attendance Allowance) Regulations 1991

- 2.—(1) The Attendance Allowance Regulations shall be amended as follows.
(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(1),
(ii) Part IV of the Social Work (Scotland) Act 1968(2),
(iii) the Mental Health (Care and Treatment) (Scotland) Act 2003(3),

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- (1) 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.
- (2) 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.
- (3) 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.

- (iv) the Community Care and Health (Scotland) Act 2002(4),
 - (v) the Mental Health Act 1983(5), 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
 - (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(6), the National Health Service (Wales) Act 2006(7), or the National Health Service (Scotland) Act 1978(8).
- (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.”.

(4) 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.

(5) 1983 c. 20. Amendments which are not relevant to these Regulations have been made to this Act.

(6) 2006 c. 41.

(7) 2006 c. 42.

(8) 1978 c. 29.