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STATUTORY INSTRUMENTS

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**2013 No. 389**

**The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013**

**Amendment of the Social Security (Attendance Allowance) Regulations 1991**

**3.—(1)** The Social Security (Attendance Allowance) Regulations 1991<sup>(1)</sup> are amended as follows.

- (2) In regulation 1(2) (citation, commencement and interpretation)—
- (a) omit the definitions of “the NHS Act of 1977” and of “the NHS Act of 1990”;
  - (b) after the definition of “the NHS Act of 1978” insert the following definitions—
    - ““ the NHS Act of 2006” means the National Health Service Act 2006;”;
    - ““the NHS (Wales) Act of 2006” means the National Health Service (Wales) Act 2006”.
- (3) In regulation 2 (conditions as to residence and presence in Great Britain)<sup>(2)</sup>—
- (a) in paragraph (1), after the words “of this regulation” insert the words “and regulations 2A and 2B”;
  - (b) in paragraph (1)(a)(i)—
    - (i) for “ordinarily”, substitute “habitually”;
    - (ii) for “Great Britain”, substitute “the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands”;
  - (c) in paragraph (1)(a)(iii)—
    - (i) for “26”, substitute “104”;
    - (ii) for “52”, substitute “156”;
  - (d) in paragraph (2)(a)—
    - (i) in sub-paragraph (ii), for “81 and 86” substitute “111 and 115” and for “1979”, substitute “2001”;
    - (ii) after the words “the Regulations of”, for “1979” substitute “2001”;
  - (e) for paragraph (2)(d), substitute—
    - “(d) he is temporarily absent from Great Britain and that absence has not lasted for a continuous period exceeding 13 weeks.”;
  - (f) omit paragraph (2)(e);
  - (g) after paragraph (3) add—

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<sup>(1)</sup> S.I. 1991/2740.

<sup>(2)</sup> Paragraph (1)(a)(iii) of regulation 2 was amended by the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2006 (S.I. 2006/2378), regulation 7. There are other amendments not relevant to these Regulations.

“(3A) A person shall be treated as habitually resident in Great Britain for the purpose of paragraph (1)(a)(i) where—

- (a) he is resident outside Great Britain in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the Social Security (Contributions) Regulations 2001; or
- (b) he is living with a person mentioned in paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.”;

(h) after new paragraph (3A) add—

“(3B) Where a person is temporarily absent from Great Britain, he is treated as present in Great Britain for the purposes of paragraph (1)(a)(ii) and (iii) for the first 26 weeks of that absence, where—

- (a) this absence is solely in connection with arrangements made for the medical treatment of him for a disease or bodily or mental disablement which commenced before he left Great Britain; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
  - (i) outside Great Britain,
  - (ii) during the period whilst he is temporarily absent from Great Britain, and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly.”;

(i) after new paragraph (3B) add—

“(3C) For the purpose of paragraph (2)(d) and (3B) a person is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.”.

(4) After regulation 2 insert—

**“Persons residing in Great Britain to whom a relevant EU Regulation applies**

**2A.—**(1) Regulation 2(1)(a)(iii) shall not apply where on any day—

- (a) the person is habitually resident in Great Britain;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) and regulation 2B, “relevant EU Regulation” has the meaning given by section 84(2) of the Welfare Reform Act 2012.

**Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies**

**2B.** Regulation 2(1)(a)(i) to (iii) shall not apply where on any day—

- (a) the person is habitually resident in—
  - (i) an EEA state other than the United Kingdom; or
  - (ii) Switzerland;

- (b) a relevant EU Regulation applies; and
  - (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.”.
- (5) In regulation 5(3)(a) (renal dialysis), for “the NHS Act of 1977 or the NHS Act of 1978”, substitute “the NHS Act of 1978, the NHS Act of 2006 or the NHS (Wales) Act of 2006”.
- (6) In regulation 6 (hospitalisation)(3)—
- (a) in paragraph (1)(a) for “the NHS Act of 1977, the NHS Act of 1978 or the NHS Act of 1990”, substitute “the NHS Act of 1978, the NHS Act of 2006 or the NHS (Wales) Act of 2006”;
  - (b) in paragraph (2) for the words from “section 65” to the end of that paragraph, substitute —
    - “(a) section 57 of, and paragraph 14 of Schedule 7A to, the NHS Act of 1978;
    - (b) section 13 of, and paragraph 15 of Schedule 2 to, the NHS Act of 2006;
    - (c) section 28 of, and paragraph 11 of Schedule 6 to, the NHS Act of 2006;
    - (d) section 44(6) of, and paragraph 19(1) of Schedule 4 to, the NHS Act of 2006;
    - (e) section 11 of, and paragraph 15 of Schedule 2 to, the NHS (Wales) Act of 2006;
    - (f) section 18 of, and paragraph 19(1) of Schedule 3 to, the NHS (Wales) Act of 2006; or
    - (g) section 22 of, and paragraph 11 of Schedule 5 to, the NHS (Wales) Act of 2006.”.
- (7) In regulation 7 (persons in care homes)(4)—
- (a) in paragraph (2)(a)(ii), for “Part IV” substitute “sections 59 and 59A”;
  - (b) omit paragraph (3)(f).
- (8) In regulation 8 (exemption from regulations 6 and 7)(5)—
- (a) omit paragraph (5)(a);
  - (b) after paragraph (5)(b) insert—
    - “(ba) a health service hospital (within the meaning of section 275 of the NHS Act of 2006) in England;
    - (bb) a hospital in Wales vested in—
      - (i) an NHS Trust;
      - (ii) a Local Health Board; or
      - (iii) the Welsh Ministers, for the purpose of functions under the NHS (Wales) Act of 2006;”;
  - (c) after paragraph (6) insert—
    - “(6A) For the purpose of paragraph (5)(bb)—
      - (a) “NHS Trust” means a body established under section 18 of the NHS (Wales) Act of 2006; and

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(3) Paragraph (1) of regulation 6 was substituted by, and paragraph (2) was amended by, the Social Security (Disability Living Allowance and Attendance Allowance) (Amendment) Regulations 1992 (S.I. 1992/2869), regulations 2(2) and 2(3) respectively. There are other amendments not relevant to these Regulations.

(4) Regulation 7 was substituted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875), regulation 2(1) and (2).

(5) Paragraphs (5) and (6) of regulation 8 were inserted by the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), regulation 8(2)(a) and (b). Paragraph (5) was amended by the Social Security Benefits (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/518), regulation 2(3)(a) and (b). Paragraph (6) was substituted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875), regulation 2(1) and (3). There are other amendments not relevant to these Regulations.

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

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(b) “Local Health Board” means a body established under section 11 of the NHS (Wales) Act of 2006.”.

(9) In regulation 8A (adjustment of allowance where medical expenses are paid from public funds under war pensions instruments)(~~6~~)—

(a) in paragraph (1)—

(i) for “26”, on every occasion on which it appears, substitute “21”; and

(ii) after the words “Service Pensions Order”, for “1983” substitute “2006”;

(b) in paragraph (3) for “26”, on both occasions on which it appears, substitute “21”.

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(6) Regulation 8A was inserted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 1994 (S.I. 1994/1779), regulation 2(4).