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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 (Disability Living Allowance) Regulations 1991**

4.—(1) The Social Security (Disability Living Allowance) Regulations 1991<sup>(1)</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)<sup>(2)</sup>—

(a) in paragraph (2)—

(i) omit the definitions of “the NHS Act of 1977” and of “the NHS Act of 1990”;

(ii) 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;” and

““the NHS (Wales) Act of 2006” means the National Health Service (Wales) Act 2006;”;

(b) after paragraph (3) insert—

“(4) With effect from 6th December 2018, any reference in these Regulations to—

(a) “age 65 or over”, “the age of 65 years”, “the age of 65”, “65” and “age 65 and over” shall be construed as a reference to “pensionable age”;

(b) “aged 65 or over” and “aged 65 and over” shall be construed as a reference to “of pensionable age”; and

(c) “his 65<sup>th</sup> birthday” shall be construed as a reference to “the day on which he attained pensionable age”.

(5) For the purpose of paragraph (4), “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995<sup>(3)</sup>.”

(3) In regulation 2 (conditions as to residence and presence in Great Britain)<sup>(4)</sup>—

(a) in paragraph (1), after the words “of this regulation” insert the words “and regulations 2A and 2B”;

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(1) [S.I. 1991/2890](#).

(2) Regulation 1 was amended by the Social Security (Disability Living Allowance) (Amendment) Regulations 1993 ([S.I. 1993/1939](#)), regulation 2(2); the Social Security Act 1998 (Commencement No 11, and Savings and Consequential and Transitional Provisions) Order 1999 ([S.I. 1999/2860](#)), Schedule 7, paragraphs 1(a) and (b); and the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 ([S.I. 2008/2683](#)), Schedule 1, paragraph 50.

(3) [1995 c.26](#), Schedule 4 of the Pensions Act 1995 was amended by the State Pension Credit Act 2002 ([2002 c.16](#)), section 14, Schedule 2, Part 3, paragraph 39; the Welfare Reform Act 2007 ([2007 c.5](#)), section 28(1), Schedule 3, paragraph 13; the Pensions Act 2007 ([2007 c.22](#)), section 13(1), Schedule 3, paragraphs 4(1), (3), (5) and (6); and the Pensions Act 2011 ([2011 c.19](#)), section 1(1) to (6).

(4) Paragraph (1) of regulation 2 was amended by the Social Security (Disability Living Allowance) (Amendment) Regulations 1993 ([S.I. 1993/1939](#)), regulation 2(3). Paragraph (1)(a)(iii) was amended by the Social Security (Miscellaneous Amendments) (No 4) Regulations 2006 ([S.I. 2006/2378](#)), regulation 8. There are other amendments not relevant to these Regulations.

- (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) insert—
  - “(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) insert—
  - “(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) insert—
  - “(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.”;
- (j) in paragraph (5) for “26”, substitute “104”;

(k) in paragraph (6) for “26”, substitute “104”;

(l) after paragraph (6) insert—

“(7) Paragraph (1) shall apply in the case of a child who is over the age of 6 months but who has not exceeded the age of 36 months as if in head (iii) of sub-paragraph (a) for the reference to 104 weeks there was substituted a reference to 26 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 purpose 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 in relation to the care component 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 7 (renal dialysis)(5), in both paragraphs (2)(b) and (4) 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 8 (hospitalization)(6)—

- (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;

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(5) There are amendments to regulation 7 which are not relevant to these Regulations.

(6) Paragraph (1) of regulation 8 was substituted by, and paragraph (2) amended by, the Social Security (Disability Living Allowance and Attendance Allowance) (Amendment) Regulations 1992 (S.I. 1992/2869), regulations 4(2) and (3) respectively. There are other amendments not relevant to these Regulations.

- (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 9 (persons in care homes)(7)—
- (a) in paragraph (2)(a)(ii), for “Part IV” substitute “sections 59 and 59A”;
- (b) in paragraph (3)—
- (i) in sub-paragraph (b) omit the words before “sections 49 or 73”; and
- (ii) omit sub-paragraph (d);
- (c) omit paragraph (6)(f).
- (8) In regulation 10 (exemption from regulation 8 and 9)(8)—
- (a) omit paragraph (7)(a);
- (b) after paragraph (7)(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 (8) insert—
- “(8A) For the purpose of paragraph (7)(bb)—
- (a) “NHS Trust” means a body established under section 18 of the NHS (Wales) Act of 2006; and
- (b) “Local Health Board” means a body established under section 11 of the NHS (Wales) Act of 2006.”.
- (9) In regulation 10A (adjustment of allowance where medical expenses are paid from public funds under war pensions instruments)(9)—
- (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”.
- (10) In regulation 12A (hospitalisation in mobility component cases)(10)—

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- (7) Regulation 9 was substituted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875), regulation 3(1), (2). Paragraph (3)(b) of that regulation was amended by the Local Education Authorities and Children’s Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010 (S.I. 2010/1172), Schedule 3, paragraph 25.
- (8) Paragraph (7) of regulation 10 was inserted by the Social Security (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 (S.I. 1992/3147), regulation 7(2)(b). Paragraph (7) was also amended by the Social Security (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/518), regulation 3(3)(a) and (b). Paragraph (8) was substituted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007 (S.I. 2007/2875), regulation 3(1) and (3). There are other amendments not relevant to these Regulations.
- (9) Regulation 10A was inserted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 1994 (S.I. 1994/1779), regulation 3(4).
- (10) Regulation 12A was inserted by the Social Security (Disability Living Allowance and Claims and Payments) Amendment Regulations 1996 (S.I. 1996/1436), regulation 2(2). There are other amendments to regulation 12A not relevant to these Regulations.

- (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.”.
- (11) In regulation 12B (exemption from regulation 12A)(11)—
- (a) in paragraph (3) after the words “for the purposes of paragraphs”, for “(1) and (4)” substitute “(1), (4), (7), (8) and (8A)”;
  - (b) for paragraph (7), substitute—

“(7) Subject to regulation 12C, where on 8th April 2013, paragraph (10) applies to a person and a Motability agreement entered into by or on behalf of that person is in force, regulation 12A shall, for the period following that referred to in paragraph (1)(a) or, as the case may be, paragraph (1)(b), continue not to apply to that person for the period that terminates in accordance with paragraph (8).”;
  - (c) for paragraph (8), substitute—

“(8) The period referred to in paragraph (7) terminates—

    - (a) on the first day after 8th April 2013 on which paragraph (10) first ceases to apply to the person for more than 28 consecutive days;
    - (b) in accordance with paragraph (8A); or
    - (c) on 8th April 2016;

whichever is the earliest.”;
  - (d) after paragraph (8) insert—

“(8A) The period referred to in paragraph (8)(b) terminates—

    - (a) in the case of the hire of a vehicle—
      - (i) where the vehicle is returned to the owner before the expiration of the current term of hire, on the date that the vehicle is returned to the owner;
      - (ii) where the vehicle is returned to the owner at the expiration of the current term of hire, on expiry of the current term of hire;
      - (iii) where the vehicle is retained with the owner’s consent by or on behalf of the person after the expiration of the current term of hire, on expiry of the current term of hire;
      - (iv) where the vehicle is retained otherwise than with the owner’s consent by or on behalf of the person after the expiration of the current term of hire, on expiry of the current term of hire; or

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(11) Regulation 12B was inserted by the Social Security (Disability Living Allowance and Claims and Payments) Amendment Regulations 1996 (S.I. 1996/1436), regulation 2(2). There are other amendments to regulation 12B not relevant to these Regulations.

- (v) where the vehicle is retained otherwise than with the owner’s consent by or on behalf of the person after the date of an early termination of the current term of hire, on the date of that early termination; and
  - (b) in the case of a hire-purchase agreement—
    - (i) on the purchase of the vehicle;
    - (ii) where the vehicle is returned to the owner under the terms of the agreement before the completion of the purchase, on the date that the vehicle is returned to the owner; or
    - (iii) where the vehicle is repossessed by the owner under the terms of the agreement before the completion of the purchase, on the date of repossession.”;
  - (e) after new paragraph (8A) insert—
    - “(8B) In paragraph (8A)(a) the “current term of hire” means the last term of hire that was agreed on or before 8th April 2013 but does not include any extension of that last term of hire after 8th April 2013.”;
  - (f) omit paragraph (9).
- (12) In paragraph 4(b) of Schedule 1(12), for “section 5(2)(a) of the NHS Act of 1977 or section 46(1) of the NHS Act of 1978” substitute “section 46(1) of the NHS Act of 1978 or paragraph 9 of Schedule 1 to the NHS Act of 2006 or paragraph 9 of Schedule 1 to the NHS (Wales) Act of 2006”.

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(12) Paragraph (4) of Schedule 1 was amended by the Social Security (Disability Living Allowance) (Amendment) Regulations 1993 (S.I. 1993/1939), regulation 2(5).