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STATUTORY INSTRUMENTS

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## 1996 No. 1436

### The Social Security (Disability Living Allowance and Claims and Payments) Amendment Regulations 1996

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

2.—(1) The Social Security (Disability Living Allowance) Regulations 1991<sup>(1)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) After regulation 12 there shall be inserted the following regulations—

#### **“Hospitalisation in mobility component cases**

**12A.**—(1) Subject to regulation 12B (exemption), it shall be a condition for the receipt of a disability living allowance which is attributable to entitlement to the mobility component for any period in respect of any person that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

- (a) in a hospital or similar institution under the NHS Act of 1977, the NHS Act of 1978 or the NHS Act of 1990; or
- (b) in a hospital or other similar institution maintained or administered by the Defence Council.

(2) For the purposes of paragraph (1)(a) a person shall only be regarded as not being maintained free of charge in a hospital or similar institution during any period when his accommodation and services are provided under section 65 of the NHS Act of 1977, section 58 of, or paragraph 14 of Schedule 7A to, the NHS Act of 1978 or paragraph 14 of Schedule 2 to the NHS Act of 1990.

#### **Exemption from regulation 12A**

**12B.**—(1) Subject to paragraph (2), regulation 12A shall not apply to a person—

- (a) for the first 28 days; or
- (b) where he has not attained the age of 16, for the first 84 days,

of any period throughout which he is a person to whom paragraph (10) applies.

(2) Where, on the day on which a person’s entitlement to the mobility component commences, he is a person to whom paragraph (10) applies, paragraph (1) shall not apply to him for any period of consecutive days, beginning with that day, in which he continues to be a person to whom paragraph (10) applies.

(3) For the purposes of paragraphs (1) and (4), two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period.

(4) Subject to paragraph (5) and regulation 12C, where—

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<sup>(1)</sup> S.I.1991/2890. The relevant amending instruments are S.I. 1993/1939 and 1994/1779.

- (a) immediately before 31st July 1996, a person has, for a continuous period of not less than 365 days, been a person to whom paragraph (10) applies and in receipt of the mobility component and on 31st July 1996 is a person to whom that paragraph applies; or
- (b) on a day not more than 28 days prior to 31st July 1996, a person has, for a continuous period of not less than 365 days, been a person to whom paragraph (10) applies and in receipt of the mobility component, and on or after 31st July 1996 and not more than 28 days after the last day of the previous distinct period during which that paragraph applies, becomes a person to whom that paragraph again applies,

regulation 12A shall not apply until such time as paragraph (10) first ceases to apply to him for more than 28 consecutive days.

(5) Paragraph (4) shall not apply where on 31st July 1996 a person is detained under Part II or III of the Mental Health Act 1983 or Part V or VI of the Mental Health (Scotland) Act 1984.

(6) Where, on a day after 31st July 1996, a person—

- (a) becomes detained under Part II or III of the Mental Health Act 1983 or Part V or VI of the Mental Health (Scotland) Act 1984; or
- (b) ceases to be entitled to the mobility component,

paragraph (4) shall cease to be applicable to that person and shall not again become applicable to him.

(7) Subject to regulation 12C, where—

- (a) on 31st July 1996, a person is a person to whom paragraph (10) applies and a Motability agreement entered into by or on behalf of that person is in force; or
- (b) a person becomes a person to whom paragraph (10) applies on a day after 31st July 1996 and on that day there is in force a Motability agreement entered into by or on behalf of that person,

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 referred to in paragraph (8) or, as the case may be, paragraph (9).

(8) Subject to paragraph (9), the period referred to in paragraph (7) shall terminate at the end of the period specified in regulation 44(3) or, as the case may be, regulation 44(4) of the Social Security (Claims and Payments) Regulations 1987<sup>(2)</sup> that is relevant to that Motability agreement.

(9) Where—

- (a) the Motability agreement was made under the scheme run by Motability for wheelchairs;
- (b) on the day immediately following the day that agreement ceases to be in force, a subsequent agreement of the same type is entered into by or on behalf of that person; and
- (c) on the day referred to in sub-paragraph (b), the person is a person to whom paragraph (10) applies,

the period referred to in paragraph (7) shall terminate at the end of the period specified in regulation 44(3) or, as the case may be regulation 44(4) of the Social Security (Claims and Payments) Regulations 1987 that is relevant to the last such Motability agreement.

(10) This paragraph refers to a person who is undergoing medical or other treatment in a hospital or other institution in any of the circumstances referred to in regulation 12A.

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(2) S.I. 1987/1968. The relevant amending instruments are S.I. 1990/2208 and 1991/2741.

(11) For the purposes of paragraph (4), receipt of mobility allowance prior to 6th April 1992 shall be treated as receipt of the mobility component.

(12) In this regulation—

- (a) “Motability agreement” means an agreement such as is referred to in regulation 44(1) of the Social Security (Claims and Payments) Regulations 1987 (payment of disability living allowance on behalf of a beneficiary in settlement of liability for payments under an agreement for the hire or hire-purchase of a vehicle);
- (b) “Motability” means the company, set up under that name as a charity and originally incorporated under the Companies Act 1985<sup>(3)</sup> and subsequently incorporated by Royal Charter.

### **Adjustment of benefit to certain persons exempted from regulation 12A**

**12C.**—(1) Subject to paragraph (3), where a person is a person to whom regulation 12B(4) applies and the mobility component would otherwise be payable at the higher rate prescribed by regulation 4(2)(a), the benefit shall be adjusted so that it is payable at the lower rate prescribed by regulation 4(2)(b).

(2) Subject to paragraph (3), where regulation 12B(7) applies, the benefit shall be adjusted so that it is payable at a rate equal to the weekly amount payable under the relevant agreement for the period referred to in that regulation.

(3) Where paragraphs (4) and (7) of regulation 12B both apply, the benefit shall be adjusted so that it is payable either at the lower rate prescribed by regulation 4(2)(b) or at a rate equal to the weekly amount payable under the relevant agreement referred to in regulation 12B(7), whichever is the greater.”.