

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (ATTENDANCE ALLOWANCE AND**  
**DISABILITY LIVING ALLOWANCE) (AMENDMENT) REGULATIONS**  
**2007**

**2007 No. 2875**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This instrument provides the regulatory framework governing the circumstances in which payment of Attendance Allowance or the care component of Disability Living Allowance is withdrawn from care home residents. The circumstances are where any of the costs of the accommodation, board or personal care are met, in whole or in part, out of public or local funds under a specified enactment.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Section 60 of the Welfare Reform Act 2007 (c 5) makes amendments to the Social Security Contributions and Benefits Act 1992 (c 4) 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 those resident in care homes. This instrument is made under those new powers to provide greater clarity and transparency to when payment of Attendance Allowance or the care component of Disability Living Allowance is withdrawn from care home residents.
  - 4.2 During debate in the House of Lords on the Welfare Reform Act 2007, Lord McKenzie of Luton gave assurances that this instrument would be subject to informal consultation to ensure that the existing circumstances whereby Attendance Allowance or the care component of Disability Living Allowance are, or are not, withdrawn from care home residents would be maintained. Further details on the informal consultation are at paragraph 7.7.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *Policy*

7.1 Attendance Allowance and Disability Living Allowance are paid as a contribution towards the disability-related extra costs of disabled people. Payment of Attendance Allowance or the care component of Disability Living Allowance – but not the mobility component of Disability Living Allowance – is withdrawn after 28 days where local authorities provide accommodation under specified enactments or the cost of that accommodation is met, in full or part, out of public or local funds in pursuance of those same listed enactments. The payments are withdrawn in these circumstances because all of a person’s personal care needs are met by the services provided in a care home, and to continue to pay Attendance Allowance or the care component of Disability Living Allowance would amount to duplicate provision from public funds.

7.2 There are instances where accommodation and services are provided and/or funded by local authorities where payment of Attendance Allowance or the care component of Disability Living Allowance is not withdrawn. Examples of this include adult placements, supported lodgings, sheltered accommodation, extra care housing, hostels etc, where residents claim Housing Benefit which is used to pay rent.

7.3 However, the legislation is far from clear on what constitutes the “cost of accommodation” and references to the enactments which provide the powers for local authorities to help with the costs of a person’s place in a care home are out of date, or may become so, because the enactments that they refer to are either amended or replaced.

7.4 Therefore, for reasons of clarity and avoidance of doubt, references to the specified enactments which govern when payment of Attendance Allowance or the care component of Disability Living Allowance is stopped have been removed from the primary legislation and are now prescribed in these regulations. The new regulation-making powers within the amended primary legislation have also dispelled confusion surrounding the meaning of “costs of the accommodation” by redrawing the power to refer to “any of the costs of any qualifying services” and then clearly defining “qualifying services” as accommodation, board, and personal care.

- 7.5 The regulations also take the opportunity to resolve an ambiguity concerning days of entry to, and discharge from, a care home. As explained above, Attendance Allowance and the care component of Disability Living Allowance are withdrawn after 28 days' residence in a care home, except where recipients meet the full cost of the accommodation and related services (except for NHS free nursing care) from their own resources. Linking rules apply to successive short stays when the 28 day period is calculated. It has been a longstanding policy that days of arrival to, and departure from, a care home are not treated as days in a care home. However, recent advice points to the fact that the legislation has the opposite effect, which is disadvantageous to Attendance Allowance and Disability Living Allowance recipients – especially those people requiring frequent stays in care homes e.g. for respite care. The regulations take the opportunity to put onto a firm regulatory foundation the policy intention that the day of entry to, and discharge from, a care home shall be treated as a day out of a care home.
- 7.6 One anomaly arises from this change due to the fact that the current legislation (which provides that Attendance Allowance and Disability Living Allowance will not be paid to those maintained free of charge in an NHS hospital) also provides for days of admission to, and discharge from, hospitals to be treated as days at home. Treating days of arrival and departure at care homes in the same way means that the day someone moves from a hospital to a care home or vice versa would fall to be treated as a day at home, and Attendance Allowance or the care component of Disability Living Allowance would be payable for that single day. There is no policy justification for these payments in circumstances where people are transferring from a care home to hospital or vice versa and they would add to the administrative complexity of the benefits. We therefore want to make it clear that the day of transfer between a care home and a hospital or similar institution (or vice versa) is to be treated as a day in a care home. We have chosen the day of transfer to be treated as a day in a care home because this can be more advantageous to Disability Living Allowance recipients as they may receive payment of the mobility component while in a care home but not while in hospital (unless as a private patient).

### *Consultation*

- 7.7 It has always been our intention that the circumstances under which Attendance Allowance or the care component of Disability Living Allowance are, or are not, currently withdrawn will not alter as a result of these legislative changes. To ensure that this is the case, and that the regulations do not widen the scope to withdraw Attendance Allowance or the care component of Disability Living Allowance, we have informally consulted with a group of key stakeholders including parties who have previously expressed an interest or concern about the provision: the Local Government Association, other Government

Departments, the devolved administrations and the Social Security Advisory Committee. The stakeholders consulted are content that the regulations achieve their policy purpose and have not widened the scope to withdraw Attendance Allowance or the care component of Disability Living Allowance.

### *Guidance*

- 7.8 Internal guidance will be amended to reflect the changes made and a bulletin to staff will be issued to alert them to the changes.

### *Consolidation*

- 7.9 There are no plans to consolidate the Regulations applicable to this instrument.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

- 8.2 There will be a minimal impact on the public sector.

## **9. Contact**

- 9.1 Phil Joseph at the Department for Work and Pensions Tel: 020 7962 8091 or email: [phil.joseph@dwp.gsi.gov.uk](mailto:phil.joseph@dwp.gsi.gov.uk) can answer any queries regarding the instrument.