

# Social Security (Disability Living Allowance) Regulations 1991

(SI 1991/2890) (*as amended*)

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Whereas a draft of this instrument was laid before Parliament in accordance with section 12(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 and approved by resolution of each House of Parliament; now therefore the Secretary of State for Social Security, in exercise of the powers conferred by sections 37ZA(6), 37ZB(2), (3), (7) and (8), 37ZC, 37ZD, 37ZE(2), 85(1), 114(1) and 166(2) to (3A) of and Schedule 20 to the Social Security Act 1975, section 13 of the Social Security (Miscellaneous Provisions) Act 1977 and section 5(1) of the Disability Living Allowance and Disability Working Allowance Act 1991, and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made consequential upon section 1 of the Disability Living Allowance and Disability Working Allowance Act 1991, hereby makes the following Regulations:

### PART I

#### INTRODUCTION

##### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Disability Living Allowance) Regulations 1991 and shall come into force on 6th April 1992.

(2) In these Regulations—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Administration Act” means the Social Security Administration Act 1992;

“the 1998 Act” means the Social Security Act 1998;

“the NHS Act of 1977” means the National Health Service Act 1977;

“the NHS Act of 1978” means the National Health Service (Scotland) Act 1978;

“the NHS Act of 1990” means the National Health Service and Community Care Act 1990;

“adjudicating authority” means, as the case may require, the Secretary of State, an appeal tribunal constituted under Chapter I of Part I of the 1998 Act, the Chief or any other Social Security Commissioner, or a tribunal consisting of any three or more such Commissioners constituted in accordance with section 16(7) of that Act;

“care component” means the care component of a disability living allowance;

“mobility component” means the mobility component of a disability living allowance;

“terminally ill” shall be construed in accordance with section 66(2) of the Act.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule bearing that number in these Regulations and any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph of that regulation or Schedule bearing that number.

## PART II

### GENERAL

#### **Disapplication of section 1(1A) of the Administration Act**

**1A.**—Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) to a person under the age of 16;
- (b) to any claim for disability living allowance made or treated as made before 9th February, 1998.

#### **Conditions as to residence and presence in Great Britain**

**2.**—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 71 (6) of the Act as to residence and presence in Great Britain in relation to any person on any day shall be that—

- (a) on that day—
    - (i) he is ordinarily resident in Great Britain; and
    - (ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or section 115 of that Act does not apply to him for the purposes of entitlement to disability living allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and
    - (ii) he is present in Great Britain; and
    - (iii) he has been present in Great Britain for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day;
  - (b) ...
- (1A) *omitted*

(2) For the purposes of paragraph (1)(a)(ii) and (iii), notwithstanding that on any day a person is absent from Great Britain, he shall be treated as though he was present in Great Britain if his absence is by reason only of the fact that on that day—

- (a) he is abroad in his capacity as—
  - (i) a serving member of the forces,

- (ii) an airman or mariner within the meaning of regulations 81 and 86 respectively of the Social Security (Contributions) Regulations 1979, and for the purpose of this provision, the expression “serving members of the forces” has the same meaning as in regulation 1(2) of the Regulations of 1979; or
  - (b) he is in employment prescribed for the purposes of section 120 of the Act in connection with continental shelf operations; or
  - (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or stepmother of that person; or
  - (d) his absence from Great Britain is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or
  - (e) his absence from Great Britain is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Great Britain, and the Secretary of State has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Great Britain.
- (3) ...
- (4) Where a person is terminally ill and—
- (a) makes a claim for disability allowance; or
  - (b) an application is made for a revision under section 9 of the 1998 Act or supersession under section 10 of that Act of his award of disability living allowance, expressly on the ground that he is such a person, paragraph (1) shall apply to him as if head (iii) of subparagraph (a) was omitted.
- (5) Paragraph (1) shall apply in the case of a child under the age of 6 months as if in head (iii) of sub-paragraph (a) for the reference to 26 weeks there was substituted a reference to 13 weeks.
- (6) Where in any particular case a child has by virtue of paragraph (5), entitlement to the care component immediately before the day he attains the age of 6 months, then until the child attains the age of 12 months, head (iii) of sub-paragraph (a) of paragraph (1) shall continue to apply in his case as if for the reference to 26 weeks there was substituted a reference to 13 weeks.

### **Age 65 or over**

**3.—(1)** A person shall not be precluded from entitlement to either component of disability living allowance by reason only that he has attained the age of 65 years if he is a person to whom paragraphs (2) and (3) apply.

- (2) Paragraph (3) applies to a person who—

- (a) made a claim for disability living allowance before he attained the age of 65, which was not determined before he attained that age, and
  - (b) did not at the time he made the claim have an award of disability living allowance for a period ending on or after the day he attained the age of 65.
- (3) In determining the claim of a person to whom this paragraph applies, where the person otherwise satisfies the conditions of entitlement to either or both components of disability living allowance for a period commencing before his 65th birthday (other than the requirements of section 72 (2)(a), or, as the case may be, section 73 (9)(a) of the Act (3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.
- (4) Schedule 1, which makes further provision for persons aged 65 or over shall have effect.

### **Rate of benefit**

4.—(1) The three weekly rates of the care component are—

- (a) the highest rate, payable in accordance with section 72(4)(a) of the Act, £67.00;
- (b) the middle rate, payable in accordance with section 72(4)(b) of the Act, £44.85;
- (c) the lowest rate, payable in accordance with section 72(4)(c) of the Act, £17.75.

(2) The two weekly rates of the mobility component are—

- (a) the higher rate, payable in accordance with section 73(11)(a) of the Act, £46.75; and
- (b) the lower rate, payable in accordance with section 73(11)(b) of the Act, £17.75.

### **Late claim by a person previously entitled**

5. ...

PART III  
CARE COMPONENT

**Qualifying period for care component after an interval**

**6.**—(1) The period prescribed for the purposes of section 72 (2)(a)(ii) of the Act is a period of 3 months ending on the day on which the person was last entitled to the care component or to attendance allowance where that day falls not more than 2 years before the date on which entitlement to the care component would begin, or would have begun but for any regulations made under section 5(1)(k) of the Administration Act (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

(2) Except in a case to which paragraph (3) applies, this regulation shall apply to a person to whom paragraph 3 or 7 of Schedule 1 refers as if for the reference to 3 months there was substituted a reference to 6 months.

(3) Paragraph (1) and not paragraph (2), shall apply to those persons referred to in paragraph (2) who, on the day before they attained the age of 65, had already completed the period of three months referred to in paragraph (1).

(4) For the purposes of paragraph (3), the modification made in Schedule 1—

(a) in paragraph 3 (2) and 7(2), to section 72 (2)(a) of the Act, and

(b) in paragraph 5 (2), to section 73 (9)(a) of the Act, shall be treated as not having been made.

**Renal Dialysis**

**7.**—(1) A person who suffers from renal failure and falls within the provisions in paragraph (2) shall be taken to satisfy—

(a) where he undergoes renal dialysis by day, the conditions in paragraph (b) of subsection (1) of section 72 of the Act (severe physical or mental disability);

(b) where he undergoes renal dialysis by night, the conditions in paragraph (c) of that subsection; or

(c) where he undergoes renal dialysis by day and by night, the conditions in either paragraph (b) or paragraph (c) of subsection (1), but not both.

(2) Subject to paragraph (3), a person falls within this paragraph—

(a) if—

(i) he undergoes renal dialysis two or more times a week; and

(ii) the renal dialysis he undergoes is of a type which normally requires the attendance or supervision of another person during the period of the dialysis; or

- (iii) because of the particular circumstances of his case he in fact requires another person, during the period of the dialysis, to attend in connection with his bodily functions or to supervise him in order to avoid substantial danger to himself; and
  - (b) if, where he undergoes dialysis as an out-patient in a hospital or similar institution, being treatment provided under the NHS Act of 1977 or the NHS Act of 1978, no member of the staff of the hospital or institution assists with or supervises the dialysis.
- (3) Paragraph (2)(b) does not apply for the purpose of determining whether a person is to be taken to satisfy any of the conditions mentioned, in paragraph (1) during the periods mentioned in section 72(2)(a)(i) and (b)(i) of the Act.
- (4) Except to the extent that provision is made in paragraph (2)(b), a person who undergoes treatment by way of renal dialysis as an outpatient in a hospital or similar institution, being treatment provided under the NHS Act of 1977 or the NHS Act of 1978, shall not be taken solely by reason of the fact that he undergoes such dialysis, as satisfying any of the conditions mentioned in subsection (1)(a) to (c) of section 72 of the Act.

### **Hospitalisation**

**8.**—(1) Subject to regulation 10, it shall be a condition for the receipt of a disability living allowance which is attributable to entitlement to the care 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 or 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.

(2A) For the purposes of paragraph (1), a period during which a person is maintained free of charge while undergoing medical or other treatment as an in-patient shall be deemed to begin on the day after the day on which he enters a hospital or similar institution referred to in that paragraph and to end on the day before the day on which he leaves such a hospital or similar institution.

(3) ...

### **Persons in care homes**

**9.**—(1) Except in the cases specified in paragraphs (3) to (5), and subject to regulation 10, a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component 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,
  - (ii) Part IV of the Social Work (Scotland) Act 1968,
  - (iii) the Mental Health (Care and Treatment) (Scotland) Act 2003,
  - (iv) the Community Care and Health (Scotland) Act 2002,
  - (v) the Mental Health Act 1983; or
- (b) any other enactment relating to persons under disability or to young persons or to education or training.
- (3) Paragraph (2)(b) shall not apply in circumstances where any of the costs of the qualifying services provided for him are borne wholly or partly out of public or local funds by virtue of—
- (a) section 485 of the Education Act 1996, section 14 of the Education Act 2002 or section 73 of the Education (Scotland) Act 1980 (which relate to grants in aid of educational services);
  - (b) sections 1, 2 or 3 of the Education Act 1962 (which relate respectively to awards by local education authorities in respect of degree courses and further education and awards by the Secretary of State to persons undergoing teacher training or postgraduate courses) or sections 49 or 73 of the Education (Scotland) Act 1980 (which relate respectively to the power of education authorities to assist persons to take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others);
  - (c) section 65 of the Further and Higher Education Act 1992 or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005 (which relate respectively to the funding of further education and the administration of funds);
  - (d) section 1 of the Education (Student Loans) Act 1990 (which relates to student loans); or
  - (e) section 22 of the Teaching and Higher Education Act 1998.
- (4) Subject to paragraph (5), paragraphs (1) and (2) shall not apply in the case of a child who—
- (a) has not attained the age of 16 and is being looked after by a local authority; or
  - (b) has not attained the age of 18 and to whom—

- (i) section 17(10)(b) of the Children Act 1989 or section 93(4)(a)(ii) of the Children (Scotland) Act 1995 (impairment of health and development) applies because his health is likely to be significantly impaired, or further impaired, without the provision of services for him, or
  - (ii) section 17(10)(c) of the Children Act 1989 (disability) or section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (disability) applies; or
- (c) who is accommodated outside the United Kingdom and the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 320 of the Education Act 1996 or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004.
- (5) Sub-paragraphs (a) and (b) of paragraph (4) shall only apply during any period which the local authority looking after the child place him in a private dwelling with a family, or a relative of his, or some other suitable person.
- (6) In this regulation and in regulation 10, 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, the National Health Service (Wales) Act 2006, or the National Health Service (Scotland) Act 1978.
- (7) 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 (8) and (9), 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.
- (8) 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.

(9) 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.

### **Persons to whom regulations 9 and 10 apply with modifications**

**9A.** ...

### **Exemption from regulation 8 and 9**

**10.**—(1) Regulation 8, or as the case may be, regulation 9, shall not, subject to the following provisions of this regulation, apply to a person for the first 28 days of any period throughout which he is someone to whom paragraph (4) applies.

(2) Regulation 8 shall not, subject to paragraph (3), apply to a person who has not attained the age of 16 for the first 84 days of any period throughout which he is someone to whom paragraph (4) refers.

(3) Where on the day the person's entitlement to the care component commenced, he is a person to whom paragraph (4) refers, then paragraph (1) or, as the case may be, paragraph (2) 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 (4) refers.

(4) This paragraph refers to a person who—

- (a) is undergoing medical or other treatment in a hospital or other institution in any of the circumstances mentioned in regulation 8; or
- (b) would, but for this regulation, be prevented from receiving the care component of a disability working allowance by reason of regulation 9.

(5) For the purposes of paragraphs (1) and (2)—

- (a) 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 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;
- (b) any period or periods to which regulations 8(1) or 9(1) refers shall be taken into account and aggregated with any period to which the other of them refers.

(6) Regulation 8 or as the case may be regulation 9 shall not apply... in the case of a person who is residing in a hospice and is terminally ill where the Secretary of State has been informed that he is terminally ill—

- (a) on a claim for the care component,
- (b) on an application for a revision under section 9 of the 1998 Act or supersession under section 10 of that Act of an award of disability living allowance, or
- (c) in writing in connection with an award of, or a claim for, or an application for a revision under section 9 of the 1998 Act or supersession under section 10 of that Act of an award of, disability living allowance.

(7) In paragraph (6) “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages other than—

- (a) a health service hospital (within the meaning of section 128 of the NHS Act of 1977) in England or Wales;
- (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978) in Scotland;
- (c) a hospital maintained or administered by the Defence Council; or
- (d) an institution similar to a hospital mentioned in any of the preceding subparagraphs of this paragraph.

(8) Regulation 9 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 the assistance from another person or a charity, or
- (b) on his behalf by another person or a charity.

(9) ...

### **Adjustment of allowance where medical expenses are paid from public funds under war pensions instruments**

**10A.**—(1) In this regulation—

“article 25B” means article 25B of the Personal Injuries (Civilians) Scheme 1983 (medical expenses) and includes that article as applied by article 48B of that Scheme;

“article 26” means article 26 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (medical expenses);

and in this regulation and regulation 10B “relevant accommodation” means accommodation provided as a necessary ancillary to nursing care where the medical expenses involved are wholly borne by the Secretary of State pursuant to article 25B or article 26.

(2) This regulation applies where a person is provided with relevant accommodation.

(3) Subject to regulation 10B where this regulation applies and there are payable in respect of a person both a payment under article 25B or article 26 and a disability living allowance which is attributable to the care component, the allowance, in so far as it is so attributable, shall be adjusted by deducting from it the amount of the payment under article 25B or article 26, as the case may be, and only the balance shall be payable.

### **Exemption from regulation 10A**

**10B.**—(1) Regulation 10A shall not, subject to the following provisions of this regulation, apply to a person in respect of the first 28 days of any period during which the amount of any

disability living allowance attributable to the care component would be liable to be adjusted by virtue of regulation 10A(3).

(2) For the purposes of paragraph (1) 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 aggregate of such distinct periods and ending on the last day of the later or last such period.

(3) For the purposes of this paragraph a day is a relevant day in relation to a person if it fell not earlier than 28 days before the first day on which he was provided with relevant accommodation; and either—

- (a) was a day when he was undergoing medical treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 8; or
- (b) was a day when he was, or would but for regulation 10 have been, prevented from receiving a disability living allowance attributable to the care component by virtue of regulation 9(1); and where there is in relation to a person a relevant day, paragraph (1) shall have effect as if for “28 days” there were substituted such lesser number of days as is produced by subtracting from 28 the number of relevant days in his case.

### **Prescribed circumstance for entitlement to the care component**

**10C.**—For the purposes of section 72(7) of the Act (prescribed circumstances in which a person is to be taken to satisfy or not to satisfy the conditions mentioned in section 72(1)(a) to (c) of that Act), a person shall not be taken to satisfy subsection (1)(a)(i) or (b)(i) (day attention) or (c)(i) (night attention) unless the attention the severely disabled person requires from another person is required to be given in the physical presence of the severely disabled person.

## **PART IV**

### **MOBILITY COMPONENT**

#### **Qualifying period for mobility component after an interval**

**11.**—The period prescribed for the purposes of section 73 (9)(a)(ii) of the Act is a period of 3 months ending on the day which the person was last entitled to the mobility component or to mobility allowance, where that day falls not more than 2 years before the date on which entitlement to the mobility component would begin or would have begun but for any regulations made under section 5(1)(k) of the Administration Act (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

#### **Entitlement to the mobility component**

**12.**—(1) A person is to be taken to satisfy the conditions mentioned in section 73 (1)(a) of the Act (unable or virtually unable to walk) only in the following circumstances—

- (a) his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to the place of residence or as to place of, or nature of, employment—

- (i) he is unable to walk; or
  - (ii) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk; or
  - (iii) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or
- (b) he has both legs amputated at levels which are either through or above the ankle, or he has one leg so amputated and is without the other leg, or is without both legs to the same extent as if it, or they, had been so amputated.
- (2) For the purposes of section 73 (2)(a) of the Act (mobility component for the blind and deaf) a person is to be taken to satisfy—
- (a) the condition that he is blind only where the degree of disablement resulting from the loss of vision amounts to 100 per cent; and
  - (b) the condition that he is deaf only where the degree of disablement resulting from loss of hearing when using any artificial aid which he habitually uses or which is suitable in his case amounts to not less than 80 per cent on a scale where 100 per cent represents absolute deafness.
- (3) For the purposes of section 73 (2)(b) of the Act, the conditions are that by reason of the combined effects of the person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.
- (4) Except in a case to which paragraph (1)(b) applies, a person is to be taken not to satisfy the conditions mentioned in section 73 (1)(a) of the Act if he—
- (a) is not unable or virtually unable to walk with a prosthesis or artificial aid which he habitually wears or uses, or
  - (b) would not be unable or virtually unable to walk if he wore or used a prosthesis or an artificial aid which is suitable in his case.
- (5) A person falls within subsection (3)(a) of section 73 of the Act (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.
- (6) A person falls within subsection (3)(b) of section 73 of the Act (severe behavioural problems) if he exhibits disruptive behaviour which—
- (a) is extreme,
  - (b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and

- (c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.

(7) For the purposes of section 73(1)(d) of the Act, a person who is able to walk is to be taken not to satisfy the condition of being so severely disabled physically or mentally that he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time if he does not take advantage of the faculty in such circumstances because of fear or anxiety.

(8) Paragraph (7) shall not apply where the fear or anxiety is:

- (a) a symptom of a mental disability; and
- (b) so severe as to prevent the person from taking advantage of the faculty in such circumstances.

### **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.

(2A) For the purposes of paragraph (1), a period during which a person is maintained free of charge while undergoing medical or other treatment as an in-patient shall be deemed to begin on the day after the day on which he enters a hospital or similar institution referred to in that paragraph and to end on the day before the day on which he leaves such a hospital or similar institution.

### **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 such period.

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

- (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 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995.

(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 5, 6 or 7 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or section 52D or 52M of the Criminal Procedure (Scotland) Act 1995.; 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 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.

(9A) Regulation 12A shall not apply in the case of a person who is residing in a hospice and is terminally ill where the Secretary has been informed that he is terminally ill—

- (a) on a claim for disability living allowance;
- (b) on an application for a revision under section 9 of the 1998 Act or supersession under section 10 of that Act of an award of disability living allowance; or
- (c) in writing in connection with an award of, or a claim for, or an application for revision under section 9 of the 1998 Act or supersession under section 10 of that Act of an award of, disability living allowance.

(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.

(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—

- (za) “hospice” has the same meaning as that given in paragraph (7) of regulation 10;
- (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 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.

## **Invalid Vehicle Scheme**

**13.**—Schedule 2, which relates to the entitlement to mobility component of certain persons eligible for invalid carriages shall have effect.

## **SCHEDULES**

Regulation 3(4)

### **SCHEDULE 1**

#### **PERSONS AGED 65 AND OVER**

#### **Revision or Supersession of an award made before person attained 65**

**1.**—(1) This paragraph applies where—

- (a) a person is aged 65 or over;
- (b) the person has an award of disability living allowance made before he attained the age of 65;
- (c) an application is made in accordance with section 9 of the 1998 Act or section 10 of that Act for that award to be revised or superseded.
- (d) an adjudicating authority is satisfied that the decision awarding disability living allowance ought to be revised or superseded.

(2) Where paragraph (1) applies, the person to whom the award relates shall not, subject to paragraph (3), be precluded from entitlement to either component of disability living allowance solely by reason of the fact that he is aged 65 or over when the revision or supersession is made.

(3) Where the adjudicating authority determining the application is satisfied that the decision ought to be superseded on the ground that there has been a relevant change of circumstances since the decision was given, paragraph (2) shall apply only where the relevant change of circumstances occurred before the person attained the age of 65.

## **Revision or Supersession of an award other than a review to which paragraph 1 refers**

2.—References in the following paragraphs of this Schedule to a revision or supersession of an award refer only to those revisions or supersessions where the awards which are being revised or superseded were made—

- (a) on or after the date the person to whom the award relates attained the age of 65; or
- (b) before the person to whom the award relates attained the age of 65 where the award is superseded by reference to a change in the person's circumstances which occurred on or after the day he attained the age of 65.

## **Age 65 and over and entitled to the care component**

3.—(1) This paragraph applies where a person on or after attaining the age of 65—

- (a) is entitled to the care component and an adjudicating authority is satisfied that the decision awarding it ought to be revised under section 9 of the 1998 Act or superseded under section 10 of that Act; or
- (b) makes a renewal claim for disability living allowance.

(2) Where a person was entitled on the previous award or on the award being revised or superseded to the care component payable—

- (a) at the lowest rate, that person shall not be precluded, solely by reason of the fact that he is aged 65 or over, from entitlement to the care component; or
- (b) at the middle or highest rate, that person shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the care component payable at the middle or highest rate,

but in determining that person's entitlement, section 72 of the Act shall have effect as if in paragraph (a) of subsection (2) of that section for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection was omitted.

(3) In this paragraph, a renewal claim is a claim made for a disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date the claim was made, been entitled under an earlier award to the care component or to attendance allowance (referred to in this paragraph as "the previous award"); and
- (b) attained the age of 65 before that entitlement ended.

## **Invalid Vehicle Scheme**

4.—(1) Where—

- (a) a certificate issued in respect of a person under section 13(1) of the Social Security (Miscellaneous Provisions) Act 1977 is in force, or

- (b) an invalid carriage or other vehicle is or was on or after January 1, 1976 made available to a person by the Secretary of State under section 5(2)(a) of the NHS Act of 1977 or section 46(1) of the NHS Act of 1978, being a carriage or other vehicle which is—
  - (i) propelled by a petrol engine or an electric motor;
  - (ii) provided for use on a public road; and
  - (iii) controlled by the occupant, that person shall not be precluded from entitlement to mobility component payable at the higher rate specified in regulation 4(2)(a), or a care component payable at the highest or middle rate specified in regulation 4(1)(a) or (b) by reason only that he has attained the age of 65.

(2) In determining a person's entitlement where paragraph (1) applies, section 72 of the Act shall have effect as if in paragraph (a) of subsection (2) of that section for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection was omitted.

#### **Age 65 or over and entitled to mobility component**

5.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the higher rate specified in regulation 4(2)(a), and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised under section 9 of the 1998 Act or superseded under section 10 of that Act, or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) or (c) of section 73 of the Act.

(3) In this paragraph and paragraph 6 and 7 a renewal claim is a claim made for a disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date the claim was made been entitled under an earlier award to the mobility component (referred to in these paragraphs as “the previous award”); and
- (b) attained the age of 65 before that entitlement ended.

#### **Aged 65 or over and award of lower rate mobility component**

6.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the lower rate specified in regulation 4(2) and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised under section 9 of the 1998 Act or superseded under section 10 of that Act, or

(b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component, but in determining the person's entitlement to that component section 73(11) of the Act shall have effect in his case as if paragraph (a), and the words "in any other case" in paragraph (b), were omitted.

### **Award of care component where person entitled to mobility component**

7.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component and—

(a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised under section 9 of the 1998 Act or superseded under section 10 of that Act, or

(b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded solely by reason of the fact that he has attained the age of 65 from entitlement under section 72 (1) of the Act by virtue of having satisfied either the conditions mentioned in subsection (1)(b) or in subsection (1)(c), or in both those subsections, but in determining a person's entitlement, section 72 of the Act shall have effect as if in paragraph (a) of subsection (2) of that section, for the reference to 3 months there was substituted a reference to 6 months and paragraph (b) of that subsection were omitted.

Regulation 13

## SCHEDULE 2

### INVALID VEHICLE SCHEME

#### **Interpretation**

1.—In this Schedule, unless the context otherwise requires,—

"the 1977 Act" means the Social Security (Miscellaneous Provisions) Act 1977;

"vehicle scheme beneficiary" means any person of a class specified in section 13(3)(a), (c) or (d) of the 1977 Act or any person of the class specified in section 13(3)(b) of the 1977 Act whose application was approved on or after 1st January 1976 and, where an invalid carriage or other vehicle was provided or as the case may be applied for, is a person of any such class in respect of whom the invalid carriage or other vehicle provided or applied for was a vehicle—

(a) propelled by a petrol engine or by an electric motor,

(b) supplied for use on a public road, and

(c) to be controlled by the occupant; "certificate" means a certificate issued in accordance with paragraph 3.

## **Prescribed periods for purposes of section 13(3)(c) of the 1977 Act**

2.—For the purposes of section 13(3)(c) of the 1977 Act—

- (a) the prescribed period before 1 January 1976 shall be that commencing with 31st January 1970 and ending with 31st December 1975; and
- (b) the prescribed period after 1st January 1976 shall be that commencing with 2nd January 1976 and ending with 31st March 1978.

## **Issue of certificates**

3.—(1) The Secretary of State shall issue a certificate in the form approved by him in respect of any person—

- (a) who has made an application for a certificate in the form approved by the Secretary of State; and
- (b) whom the Secretary of State considers satisfies the conditions specified in subparagraph (2).

(2) The conditions specified in this sub-paragraph are that—

- (a) the person is a vehicle scheme beneficiary; and
- (b) his physical condition has not improved to such an extent that he no longer satisfies the conditions which it was necessary for him to satisfy in order to become a vehicle scheme beneficiary.

## **Duration and cancellation of certificates**

4.—(1) Subject to sub-paragraph (2) the period during which a certificate is in force shall commence on the day specified in the certificate as being the date on which it comes into force and shall continue for the life of the person concerned.

(2) If in any case the Secretary of State determines that the condition specified in paragraph 3(2)(b) is not satisfied, the certificate shall cease to be in force from the date of such non-satisfaction as determined by the Secretary of State (or such later date as appears to the Secretary of State to be reasonable in the circumstances).

## **Application of these Regulations in relation to vehicle scheme beneficiaries**

5.—In relation to a person in respect of whom a certificate is in force these Regulations shall have effect as though regulation 2(1)(a)(iii) were omitted.

Regulation 9A(1)

## **SCHEDULE 3**

### **PERSONS TO WHOM REGULATIONS 9 AND 10 APPLY WITH MODIFICATIONS**

*Repealed*