STATUTORY INSTRUMENTS

2013 No. 389

SOCIAL SECURITY

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

Made - - - - 25th February 2013

Laid before Parliament 4th March 2013

Coming into force in accordance with regulation 1(2) to (6)

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 73(1)(b) and 189(1) of the Social Security Administration Act 1992(**a**), and sections 64(1), 67(2), 70(4), 71(6), 72(8), 113(1)(a) and (2), 122(1) and 175(1), (3)(a), (b)(ii) and (iii) and (4) of the Social Security Contributions and Benefits Act 1992(**b**), makes the following Regulations.

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(**c**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013.

(2) Except in the case of a person referred to in paragraph (3) in relation to the provisions referred to in paragraphs (4) to (6), these Regulations come into force on 8th April 2013.

(3) Paragraphs (4) to (6) apply in relation to a person who has an existing award on 7th April 2013.

(4) Regulations 2(2)(b), 3(3)(b) and 4(3)(b) come into force—

(a) on the day immediately following the termination day; or

(b) on the day on which the first revision or supersession is made on or after the 8th April 2013,

whichever is earlier;

(5) Regulations 2(2)(c), 3(3)(c) and 4(3)(c) come into force—

(a) on the day immediately following the termination day; or

(b) 104 weeks after the 8th April 2013,

(**a**) 1992 c.5. Section 189(1) was amended by the Social Security Act 1998 (1998 c.14), section 86(1) and (2), Schedule 7 paragraph 109(a) and Schedule 8; the Social Security Contributions (Transfer of Functions, etc) Act 1999 (1999 c.2), section 2, Schedule 3, paragraph 57(1) and (2); and the Tax Credits Act 2002 (2002 c.21), section 60, Schedule 6.
(**b**) 1992 c.4. Section 122(1) provides that 'prescribe' means prescribe by regulations.
(**c**) *See* section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

whichever is earlier;

(6) Regulations 3(3)(e) and 4(3)(e) come into force—

(a) on the day immediately following the termination day; or

(b) 26 weeks after the 8th April 2013,

whichever is earlier.

(7) In this regulation—

(a) "existing award" means an award of—

(i) attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992(**a**);

(ii) carer's allowance under section 70 of that Act(**b**); or

(iii) disability living allowance under section 71 of that Act(**c**);

(b) "termination day" means the day on which the existing award terminates.

(8) In this regulation and in regulation 5—

(a) "revision" means a revision under section 9 of the Social Security Act 1998(**d**);

(b) "supersession" means a supersession under section 10 of the Social Security Act 1998(**e**);

(c) "the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992.

Amendment of the Social Security (Carer's Allowance) Regulations 1976

2.—(1) The Social Security (Carer's Allowance) Regulations 1976(**f**) are amended as follows.

(2) In regulation 9 (conditions relating to residence and presence in Great Britain)(**g**)—

(a) in paragraph (1), after the words "of this regulation" insert the words "and regulations 9A and 9B";

(b) in paragraph (1)(a)—

(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)(c)—

(i) for "26", substitute "104";

(ii) for "12 months", substitute "156 weeks";

(**a**) Section 64 was amended by the Welfare Reform and Pensions Act 1999 (1999 c.30), section 66(1); the Pensions Act 2007 (2007 c.22), section 13(2), Schedule 1, Part 8, paragraph 41; and the Welfare Reform Act 2012 (2012 c.5), Schedule 9, paragraphs 3, 5(1), (2) and (3), and Schedule 14, Part 9.

(**b**) Section 70 was amended by the Social Security (Severe Disablement Allowance and Invalid Care Allowance) Amendment Regulations 1994 (S.I. 1994/2556), regulation 2(3)(c); the Regulatory Reform (Carer's Allowance) Order 2002 (S.I. 2002/1457), articles 2(1),(2), 3(1), (2), Schedule, paragraphs 1 and 2(c); and the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2426), regulations 5(1) and (3).

(**c**) Section 71 was amended by the Welfare Reform and Pensions Act 1999, section 67(1).

(**d**) 1998 c.14. There is an amendment to section 9 not relevant to these Regulations.

(**e**) Section 10 was amended by the Social Security (Transfer of Functions, etc) Act 1999 (c.2), Schedule 7, paragraph 23(a) and (b) and Schedule 10, Part 1; the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), article 9(1) and Schedule 3, paragraphs 143 and 148; and the Welfare Reform Act 2012, Schedule 12, paragraph 4. There are other amendments to section 10 not relevant to these Regulations.

(**f**) S.I. 1976/409.

(**g**) Paragraph (1) of regulation 9 was amended by the Social Security (Invalid Care Allowance) Amendment Regulations 1996 (S.I. 1996/2744), regulation 2(8)(a), and the Social Security Amendment (Carer's Allowance) Regulations 2002 (S.I. 2002/2497), Schedule 2, paragraphs 1 and 2 (which substituted the words 'carer's allowance for 'invalid care allowance'). Paragraph (1)(ia) was substituted by the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636), regulation 8(1) and (2). Paragraph (3) was substituted by the Social Security (Child Benefit Consequential) Regulations 1977 (S.I. 1977/342), regulation 18, and amended by the Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc Provisions) Order 2005 (S.I. 2005/2877), Schedule 3, paragraph 6. There are other amendments not relevant to these Regulations.

(d) for paragraph (3), substitute—

"(3) Notwithstanding that on any day a person is absent from Great Britain, he shall be treated as though he were—

(a) habitually resident and present in Great Britain for the purposes of paragraphs (1)(a) to (c) if—

(i) his absence is by reason only of the fact that on that day he is abroad 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 ("the 2001 Regulations"); or

(ii) 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 step-mother of that person; and

(b) present in Great Britain for the purposes of paragraph (1)(b) and (c) if his absence is by reason only of the fact that on that day he is—

(i) abroad in his capacity as an airman within the meaning of regulation 111 of the 2001 Regulations or a mariner within the meaning of regulation 115 of those Regulations; or

(ii) in prescribed employment(**a**) in connection with continental shelf operations within the meaning of regulation 114(1) of those Regulations.".

(3) After regulation 9 insert—

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

9A.—(1) Regulation 9(1)(c) 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 9B, "relevant EU Regulation" has the meaning given by section 84(2) of the Welfare Reform Act 2012(**b**).

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

9B. Regulation 9(1)(a) to (c) 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.".

(**a**) Employment which is prescribed under regulation 114(1) of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) is employment in any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (1964 c.29), where the employment is in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998 (1998 c.17).

(**b**) 2012 c.5.

Amendment of the Social Security (Attendance Allowance) Regulations 1991

3.—(1) The Social Security (Attendance Allowance) Regulations 1991(**a**) 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;"; and

"""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)(**b**)—

(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—

"(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

---

(**a**) S.I. 1991/2740.

(**b**) 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.

(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)(**a**)—

(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;

(**a**) 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.

(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)(**a**)—

(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)(**b**)—

(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

(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)(**c**)—

(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".

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

4.—(1) The Social Security (Disability Living Allowance) Regulations 1991(**d**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)(**e**)—

(a) in paragraph (2)—

(**a**) 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).

(**b**) 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.

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

(**d**) S.I. 1991/2890.

(**e**) 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.

(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 65th 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(**a**).".

(3) In regulation 2 (conditions as to residence and presence in Great Britain)(**b**)—

(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) 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

---

(**a**) 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).

(**b**) 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) 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)(**a**), 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)(**b**)—

(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 9 (persons in care homes)(**c**)—

(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)(**d**)—

(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—

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

(**b**) 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.

(**c**) 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.

(**d**) 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.

"(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)(**a**)—

(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)(**b**)—

(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)(**c**)—

(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;

(**a**) Regulation 10A was inserted by the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 1994 (S.I. 1994/1779), regulation 3(4).

(**b**) 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.

(**c**) 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.

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

(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(**a**), 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".

Saving

5.—(1) Where paragraph (2) of this regulation applies to a person ('P')—

(a) regulation 2(2)(e) of regulation 2 of the Social Security (Attendance Allowance) Regulations 1991, or

(b) regulation 2(2)(e) of regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991,

as the case may be, shall continue to have effect in relation to P as if regulation 3(3)(f) and (h) and regulation 4(3)(f) and (h) respectively, had not been made until the earlier of the events specified in paragraph (3) takes place.

(2) This paragraph applies to P —

(a) who on 8th April 2013 is absent from Great Britain;

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

(b) whose absence is temporary and for the specific purpose of being treated for incapacity, or a disabling condition, which commenced before they left Great Britain; and

(c) in respect of whom, before 8th April 2013 the Secretary of State had certified that it was consistent with the proper administration of the Contributions and Benefits Act that, subject to the satisfaction of the condition in paragraph (2)(b), P should be treated as though P were present in Great Britain.

(3) The events specified for the purpose of paragraph (1) are either that—

(a) P returns to Great Britain; or

(b) the first revision or supersession after 8th April 2013 is made in respect of P's award.

Signed by authority of the Secretary of State for Work and Pensions

Esther McVey
Parliamentary Under Secretary of State
Department for Work and Pensions

25th February 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend three sets of regulations affecting the benefits known as Carer's Allowance ("CA"), Attendance Allowance ("AA") and Disability Living Allowance ("DLA") (the "disability benefits").

The sets of regulations that are amended are the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409) (the "CA regulations"), Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740) (the "AA regulations") and Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) (the "DLA regulations"). They:-

— change the residence and presence conditions for the disability benefits so that they align with the conditions that are being introduced for Personal Independence Payment – the benefit under Part 4 of the Welfare Reform Act 2012 that will replace DLA for people of working age. Under the revised conditions:-

  — the test of ordinary residence is changed to habitual residence;

  — the past presence test is altered so that a period of presence in Great Britain of 104 out of the past 156 weeks is required before entitlement can be established to any of the disability benefits;

  — for DLA and AA, the temporary absence rule is reduced to 13 weeks and the rule for temporary absence for medical reasons is reduced to a maximum of 26 weeks;

  — for DLA and AA, serving members of the armed forces are treated as being habitually resident in Great Britain when they are serving and stationed abroad; and

  — as a result of a judgment in the European Court of Justice in July 2011 in the case of Lucy Stewart v Secretary of State for Work and Pensions a reference has been added to the "genuine and sufficient link" for those arriving in Great Britain from another EEA state or Switzerland or moving abroad to one of those states;

— revoke regulation 9(6)(f) of the DLA regulations and regulation 7(3)(f) of the AA regulations, which provided that services provided to a resident of a care home pursuant to the National Health Service Act 2006, the National Health Service (Wales) Act 2006 or the National Health Service (Scotland) Act 1978 did not count as qualifying services. 'Qualifying services' are defined in section 72(8) of the Social Security Contributions and Benefits Act 1992 as accommodation, board and personal care;

— amend regulation 12B(7) of the DLA regulations, which provided that hospital in-patients with live Motability agreements were not subject to the hospitalisation rule (which stopped payment of the mobility component after 28 days in hospital – 84 days for a child under 16). The amendment provides that regulation 12B(7) is amended so that it no longer applies to any person who enters hospital after 8th April 2013. People with live

Motabilty contracts who are hospital in-patients on or before 8th April 2013 will continue to be paid mobility component until their live Motability contract expires. The amendment also provides that after 8th April 2016 no person with a live Motability contract will be paid mobility component;

— update references in the DLA regulations and AA regulations to reflect the equivalent references in current legislation;

— provide that with effect from 6th December 2018, references in the DLA regulations to the upper age limit for claiming DLA (65 years old) will be read as references to "pensionable age" to reflect the equalisation of pensionable ages for men and women. "Pensionable age" in relation to this amendment has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

© Crown copyright 2013

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2013 No. 389

SOCIAL SECURITY

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

ISBN 978-0-11-153553-0

£5.75

E5927 03/2013 135927T 19585

9 780111 535530