



# Social Security Contributions and Benefits Act 1992

## 1992 CHAPTER 4

### PART III

#### NON-CONTRIBUTORY BENEFITS

#### 63 Descriptions of non-contributory benefits.

Non-contributory benefits under this Part of this Act are of the following descriptions, namely—

- (a) attendance allowance;
- <sup>F1</sup>(b) .....
- (c) [<sup>F2</sup>carer's allowance]<sup>F3</sup>...;
- (d) disability living allowance;
- (e) guardian's allowance;
- (f) retirement pensions of the following categories—
  - (i) Category C, [<sup>F4</sup>payable in certain cases to a widow whose husband was over pensionable age on 5 July 1948 or to a woman whose marriage to a husband who was over pensionable age on that date was terminated otherwise than by his death] (with increase for adult <sup>F5</sup>... dependants), and
  - (ii) Category D, payable to persons over the age of 80;
- (g) age addition payable, in the case of persons over the age of 80, by way of increase of a retirement pension of any category [<sup>F6</sup>under this Act] or of some other pension or allowance from the Secretary of State.

#### Textual Amendments

- F1** S. 63(b) repealed (with savings for those entitled to severe disablement allowance for days immediately before 6.4.2001) (3.11.2000 for specified purposes, 6.4.2001 in so far as not already in

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- force) by **Welfare Reform and Pensions Act 1999 (c. 30)**, s. 89(1), **Sch. 13 Pt. IV**; S.I. 2000/2958, art. 2(3)(g)(4)(5) (with art. 4)
- F2** Words in s. 63(c) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by **The Regulatory Reform (Carers Allowance) Order 2002 (S.I. 2002/1457)**, arts. 1(1)(b), 2(2), **Sch. para. 2(b)**
- F3** Words in s. 63(c) repealed (6.4.2010) by **Welfare Reform Act 2009 (c. 24)**, ss. 58(2)(a), 61(2), **Sch. 7 Pt. 2**
- F4** Words in s. 63(f)(i) substituted (6.4.2016) by **Pensions Act 2014 (c. 19)**, s. 56(4), **Sch. 12 para. 79**
- F5** Words in s. 63(f)(i) repealed with savings (6.4.2003) by **Tax Credits Act 2002 (c. 21)**, s. 61, **Sch. 6**; S.I. 2003/938, art. 2, **Sch.** (with art. 3)
- F6** Words in s. 63(g) inserted (6.4.2016) by **Pensions Act 2014 (c. 19)**, s. 56(4), **Sch. 12 para. 85**

### *Attendance allowance*

#### **64 Entitlement.**

- (1) A person shall be entitled to an attendance allowance if he [<sup>F7</sup>has attained pensionable age], he is not entitled to [<sup>F8</sup>an allowance within subsection (1A)] and he satisfies either—
- (a) the condition specified in subsection (2) below (“the day attendance condition”), or
  - (b) the condition specified in subsection (3) below (“the night attendance condition”),
- and prescribed conditions as to residence and presence in Great Britain.
- [<sup>F9</sup>(1A) The following allowances are within this subsection—
- (a) personal independence payment;
  - [<sup>F10</sup>(aa) adult disability payment;]
  - (b) the care component of a disability living allowance.]
- (2) A person satisfies the day attendance condition if he is so severely disabled physically or mentally that, by day, he requires from another person either—
- (a) frequent attention throughout the day in connection with his bodily functions, or
  - (b) continual supervision throughout the day in order to avoid substantial danger to himself or others.
- (3) A person satisfies the night attendance condition if he is so severely disabled physically or mentally that, at night,—
- (a) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
  - (b) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- [<sup>F11</sup>(4) Circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsections (2) and (3) above as may be prescribed.]

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#### Textual Amendments

- F7** Words in s. 64(1) substituted (6.12.2018) by [Pensions Act 2007 \(c. 22\), s. 13\(3\), Sch. 1 para. 41](#)
- F8** Words in s. 64(1) substituted (8.4.2013 for specified purposes, 10.6.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\), s. 150\(3\), Sch. 9 para. 5\(2\)](#); [S.I. 2013/358, art. 7\(1\)\(2\)\(k\), Sch. 3](#); [S.I. 2013/1250, art. 2](#)
- F9** S. 64(1A) inserted (8.4.2013 for specified purposes, 10.6.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\), s. 150\(3\), Sch. 9 para. 5\(3\)](#); [S.I. 2013/358, art. 7\(1\)\(2\)\(k\), Sch. 3](#); [S.I. 2013/1250, art. 2](#)
- F10** S. 64(1A)(aa) inserted (21.3.2022 with effect in accordance with reg. 1(1) of the amending S.I.) by [The Scotland Act 2016 \(Social Security\) \(Adult Disability Payment and Child Disability Payment\) \(Amendment\) Regulations 2022 \(S.I. 2022/335\), reg. 2\(2\)](#)
- F11** S. 64(4) added (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 66\(1\), 89\(1\)](#); [S.I. 1999/3309, art. 2\(3\)](#)

#### Modifications etc. (not altering text)

- C2** S. 64 modified (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\), Sch. 3 para. 20](#)

### 65 Period and rate of allowance.

- (1) Subject to the following provisions of this Act, the period for which a person is entitled to an attendance allowance shall be—
  - (a) a period throughout which he has satisfied or is likely to satisfy the day or the night attendance condition or both; and
  - (b) a period preceded immediately, or within such period as may be prescribed, by one of not less than 6 months throughout which he satisfied, or is likely to satisfy, one or both of those conditions.
- (2) For the purposes of subsection (1) above a person who suffers from renal failure and is undergoing such form of treatment as may be prescribed shall, in such circumstances as may be prescribed, be deemed to satisfy or to be likely to satisfy the day or the night attendance condition or both.
- (3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (1)(b) above he has satisfied or is likely to satisfy both the day and the night attendance conditions, and shall be the lower rate in any other case.
- (4) A person shall not be entitled to an attendance allowance for any period preceding the date on which he makes or is treated as making a claim for it.
- (5) Notwithstanding anything in subsection (4) above, provision may be made by regulations for a person to be entitled to an attendance allowance for a period preceding the date on which he makes or is treated as making a claim for it if such an allowance has previously been paid to or in respect of him.
- (6) Except in so far as regulations otherwise provide and subject to section 66(1) below—
  - (a) a claim for an attendance allowance may be made during the period of 6 months immediately preceding the period for which the person to whom the claim relates is entitled to the allowance; and

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- (b) an award may be made in pursuance of a claim so made, subject to the condition that, throughout that period of 6 months, that person satisfies—
- (i) both the day and the night attendance conditions, or
  - (ii) if the award is at the lower rate, one of those conditions.

[<sup>F12</sup>(7) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to an attendance allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]

#### Textual Amendments

**F12** S. 65(7) inserted (31.10.2011) by [The Social Security \(Disability Living Allowance, Attendance Allowance and Carers Allowance\) \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2426\)](#), [reg. 5\(2\)](#)

## 66 Attendance allowance for the terminally ill.

- (1) If a terminally ill person makes a claim expressly on the ground that he is such a person, then—
- (a) he shall be taken—
    - (i) to satisfy, or to be likely to satisfy, both the day attendance condition and the night attendance condition [<sup>F13</sup>for so much of the period for which he is terminally ill as does not fall before the date of the claim]; and
    - (ii) to have satisfied those conditions for the period of 6 months immediately preceding [<sup>F14</sup>the date of the claim or, if later, the first date on which he is terminally ill] (so however that no allowance shall be payable by virtue of this sub-paragraph for any period preceding that date); and
  - (b) the period for which he is entitled to attendance allowance shall be [<sup>F15</sup>so much of the period for which he is terminally ill as does not fall before the date of the claim].
- (2) For the purposes of subsection (1) above—
- (a) a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months; and
  - (b) where a person purports to make a claim for an attendance allowance by virtue of that subsection on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.

#### Textual Amendments

**F13** Words in s. 66(1)(a)(i) substituted (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [ss. 66\(2\)\(a\)](#), [89\(1\)](#); [S.I. 1999/3309](#), [art. 2\(3\)](#)

**F14** Words in s. 66(1)(a)(ii) substituted (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [ss. 66\(2\)\(b\)](#), [89\(1\)](#); [S.I. 1999/3309](#), [art. 2\(3\)](#)

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**F15** Words in s. 66(1)(b) substituted (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 66(2)(c), 89(1)**; S.I. 1999/3309, art. 2(3)

## **67 Exclusions by regulation.**

(1) Regulations may provide that, in such circumstances, and for such purposes as may be prescribed, a person who is, or is treated under the regulations as, undergoing treatment for renal failure in a hospital or other similar institution otherwise than as an in-patient shall be deemed not to satisfy or to be unlikely to satisfy the day attendance condition or the night attendance condition, or both of them.

[<sup>F16</sup>(2) Regulations may provide that an attendance allowance shall not be payable in respect of a person for a period when he is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(3) The reference in subsection (2) to a care home is to an establishment that provides accommodation together with nursing or personal care.

(4) The following are qualifying services for the purposes of subsection (2)—  
(a) accommodation,  
(b) board, and  
(c) personal care.

(5) The reference in subsection (2) to a specified enactment is to an enactment which is, or is of a description, specified for the purposes of that subsection by regulations.

(6) The power to specify an enactment for the purposes of subsection (2) includes power to specify it only in relation to its application for a particular purpose.

(7) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

### **Textual Amendments**

**F16** S. 67(2)-(7) substituted for s. 67(2) (1.10.2007 for specified purposes, 29.10.2007 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 60(1), 70(2)**; S.I. 2007/2819, art. 2(2)(a)(b)

### *Severe disablement allowance*

## <sup>F17</sup>**68 Entitlement and rate.**

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### **Textual Amendments**

**F17** Ss. 68, 69 repealed (with savings for those entitled to severe disablement allowance for days immediately before 6.4.2001) (3.11.2000 for specified purposes, 6.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 65, 89(1), Sch. 13 Pt. IV**; S.I. 2000/2958, art. 2(3)(d)(4)(5) (with art. 4) (and see also [The Employment and Support Allowance \(Transitional](#)

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Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010  
(S.I. 2010/1907), regs. 1(2), 22(b))

**F17 69 Severe disablement allowance: age related addition.**

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**Textual Amendments**

**F17** Ss. 68, 69 repealed (with savings for those entitled to severe disablement allowance for days immediately before 6.4.2001) (3.11.2000 for specified purposes, 6.4.2001 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), ss. 65, 89(1), **Sch. 13 Pt. IV**; S.I. 2000/2958, art. 2(3)(d)(4)(5) (with art. 4) (and see also [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) Regulations 2010 \(S.I. 2010/1907\)](#), regs. 1(2), 22(b))

*[<sup>F18</sup>Carer's allowance]*

**Textual Amendments**

**F18** Words in s. 70 (and cross-heading) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by virtue of [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), art. 1(1)(b), **2(1)**

**70 [<sup>F18</sup>Carer's allowance]. **E+W****

- (1) A person shall be entitled to [<sup>F19</sup>a carer's allowance] for any day on which he is engaged in caring for a severely disabled person if—
- (a) he is regularly and substantially engaged in caring for that person;
  - (b) he is not gainfully employed; and
  - (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.

[<sup>F20</sup>(1A) A person who was entitled to an allowance under this section immediately before the death of the severely disabled person referred to in subsection (1) shall continue to be entitled to it, even though he is no longer engaged in caring for a severely disabled person (and the requirements of subsection (1)(a) and (c) are not satisfied), until—

- (a) the end of the week in which he ceases to satisfy any other requirement as to entitlement to the allowance; or
- (b) the expiry of the period of eight weeks beginning with the Sunday following the death (or beginning with the date of death if the death occurred on Sunday), whichever occurs first.]

- (2) In this section, “severely disabled person” means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate [<sup>F21</sup>or personal independence payment by virtue of entitlement to the daily living component at the standard or enhanced rate][<sup>F22</sup>or [<sup>F23</sup>adult disability payment by virtue of entitlement to the daily living component at the standard or enhanced rate or child disability

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payment by virtue of entitlement to the care component at the middle or highest rate]]<sup>F24</sup> or armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517)]<sup>F25</sup> or <sup>F26</sup>adult disability payment by virtue of entitlement to the daily living component at the standard or enhanced rate or child disability payment by virtue of entitlement to the care component at the middle or highest rate]] or such other payment out of public funds on account of his need for attendance as may be prescribed.

- (3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education.
- (4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Great Britain.
- <sup>F27</sup>(4A) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to an allowance under this section for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]
- <sup>F28</sup>(5) .....
- <sup>F28</sup>(6) .....
- (7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would <sup>F29</sup>have a relevant entitlement for the same day] in respect of the same severely disabled person, one of them only <sup>F30</sup>shall have that entitlement] and that shall be such one of them—
  - (a) as they may jointly elect in the prescribed manner, or
  - (b) as may, in default of such an election, be determined by the Secretary of State in his discretion.
- <sup>F31</sup>(7A) For the purposes of subsection (7) a person has a “relevant entitlement” if—
  - (a) the person is entitled to a carer’s allowance, or
  - (b) the person is entitled under section 12 of the Welfare Reform Act 2012 to the inclusion in an award of universal credit of an amount in respect of the fact that the person has regular and substantial caring responsibilities for a severely disabled person.]
- (8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.
- (9) <sup>F32</sup>A carer’s allowance] shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 4.
- <sup>F33</sup>(10) .....

#### Textual Amendments

- F19** Words in s. 70(1) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(1)(b), 2(2), [Sch. para. 2\(c\)](#)

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- F20** S. 70(1A) inserted (28.10.2002) by The Regulatory Reform (Carers Allowance) Order 2002 (S.I. 2002/1457), arts. 1(1)(a), **3(1)**
- F21** Words in s. 70(2) inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 5**
- F22** Words in s. 70(2) inserted (S.) (26.7.2021) by The Disability Assistance for Children and Young People (Scotland) Regulations 2021 (S.S.I. 2021/174), reg. 1, **sch. para. 15(2)**
- F23** Words in s. 70(2) substituted (S.) (21.3.2022) by The Disability Assistance for Working Age People (Scotland) Regulations 2022 (S.S.I. 2022/54), reg. 1, **Sch. 2 para. 16(4)**
- F24** Words in s. 70(2) inserted (8.4.2013) by The Armed Forces and Reserve Forces (Compensation Scheme) (Consequential Provisions: Primary Legislation) Order 2013 (S.I. 2013/796), arts. 1, **3(2)**
- F25** Words in s. 70(2) inserted (E.W.) (17.11.2021) by The Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) (No. 2) Order 2021 (S.I. 2021/1301), arts. 1(2), **2(2)**
- F26** Words in s. 70(2) substituted (E.W.) (21.3.2022) by The Social Security (Scotland) Act 2018 (Disability Assistance and Information-Sharing) (Consequential Provision and Modifications) Order 2022 (S.I. 2022/332), arts. 1(2), **13(2)**
- F27** S. 70(4A) inserted (31.10.2011) by The Social Security (Disability Living Allowance, Attendance Allowance and Carers Allowance) (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2426), **reg. 5(3)**
- F28** S. 70(5)(6) repealed (28.10.2002) by The Regulatory Reform (Carers Allowance) Order 2002 (S.I. 2002/1457), arts. 1(1)(a), **3(2)** (with art. 4)
- F29** Words in s. 70(7) substituted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by The Universal Credit and Miscellaneous Amendments Regulations 2015 (S.I. 2015/1754), regs. 1(1), **11(2)(a)**
- F30** Words in s. 70(7) substituted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by The Universal Credit and Miscellaneous Amendments Regulations 2015 (S.I. 2015/1754), regs. 1(1), **11(2)(b)**
- F31** S. 70(7A) inserted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by The Universal Credit and Miscellaneous Amendments Regulations 2015 (S.I. 2015/1754), regs. 1(1), **11(3)**
- F32** Words in s. 70(9) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by The Regulatory Reform (Carers Allowance) Order 2002 (S.I. 2002/1457), arts. 1(1)(b), 2(2), **Sch. para. 2(c)**
- F33** S. 70(10) omitted (28.10.1994) by virtue of The Social Security (Severe Disablement Allowance and Invalid Care Allowance) Amendment Regulations 1994 (S.I. 1994/2556), **reg. 2(3)(c)**

**70** [<sup>F86</sup>**Carer's allowance**]. **S**

- (1) A person shall be entitled to [<sup>F87</sup>a carer's allowance] for any day on which he is engaged in caring for a severely disabled person if—
- (a) he is regularly and substantially engaged in caring for that person;
  - (b) he is not gainfully employed; and
  - (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.

- [<sup>F88</sup>(1A) A person who was entitled to an allowance under this section immediately before the death of the severely disabled person referred to in subsection (1) shall continue to be entitled to it, even though he is no longer engaged in caring for a severely disabled person (and the requirements of subsection (1)(a) and (c) are not satisfied), until—
- (a) the end of the week in which he ceases to satisfy any other requirement as to entitlement to the allowance; or
  - (b) the expiry of the period of eight weeks beginning with the Sunday following the death (or beginning with the date of death if the death occurred on Sunday),



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whichever occurs first.]

- (2) In this section, “severely disabled person” means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate [F89 or personal independence payment by virtue of entitlement to the daily living component at the standard or enhanced rate][F90 or [F91 adult disability payment by virtue of entitlement to the daily living component at the standard or enhanced rate or child disability payment by virtue of entitlement to the care component at the middle or highest rate]][F92 or armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517)][F93 or [F94 adult disability payment by virtue of entitlement to the daily living component at the standard or enhanced rate or child disability payment by virtue of entitlement to the care component at the middle or highest rate]] or such other payment out of public funds on account of his need for attendance as may be prescribed.
- (3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education.
- (4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Great Britain.
- [F95(4A) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to an allowance under this section for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]
- F96(5) .....
- F96(6) .....
- (7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would [F97 have a relevant entitlement for the same day] in respect of the same severely disabled person, one of them only [F98 shall have that entitlement] and that shall be such one of them—
  - (a) as they may jointly elect in the prescribed manner, or
  - (b) as may, in default of such an election, be determined by the Secretary of State in his discretion.
- [F99(7A) For the purposes of subsection (7) a person has a “relevant entitlement” if—
  - (a) the person is entitled to a carer’s allowance, or
  - (b) the person is entitled under section 12 of the Welfare Reform Act 2012 to the inclusion in an award of universal credit of an amount in respect of the fact that the person has regular and substantial caring responsibilities for a severely disabled person.]
- (8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.
- (9) [F100 A carer’s allowance] shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 4.
- F101(10) .....

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### Textual Amendments

- F86** Words in s. 70 (and cross-heading) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by virtue of [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), art. 1(1)(b), **2(1)**
- F87** Words in s. 70(1) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(1)(b), 2(2), **Sch. para. 2(c)**
- F88** S. 70(1A) inserted (28.10.2002) by [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(1)(a), **3(1)**
- F89** Words in s. 70(2) inserted (8.4.2013) by [The Personal Independence Payment \(Supplementary Provisions and Consequential Amendments\) Regulations 2013 \(S.I. 2013/388\)](#), reg. 2, **Sch. para. 5**
- F90** Words in s. 70(2) inserted (S.) (26.7.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Regulations 2021 \(S.S.I. 2021/174\)](#), reg. 1, **sch. para. 15(2)**
- F91** Words in s. 70(2) substituted (S.) (21.3.2022) by [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(S.S.I. 2022/54\)](#), reg. 1, **Sch. 2 para. 16(4)**
- F92** Words in s. 70(2) inserted (8.4.2013) by [The Armed Forces and Reserve Forces \(Compensation Scheme\) \(Consequential Provisions: Primary Legislation\) Order 2013 \(S.I. 2013/796\)](#), arts. 1, **3(2)**
- F93** Words in s. 70(2) inserted (E.W.) (17.11.2021) by [The Social Security \(Scotland\) Act 2018 \(Disability Assistance for Children and Young People\) \(Consequential Modifications\) \(No. 2\) Order 2021 \(S.I. 2021/1301\)](#), arts. 1(2), **2(2)**
- F94** Words in s. 70(2) substituted (E.W.) (21.3.2022) by [The Social Security \(Scotland\) Act 2018 \(Disability Assistance and Information-Sharing\) \(Consequential Provision and Modifications\) Order 2022 \(S.I. 2022/332\)](#), arts. 1(2), **13(2)**
- F95** S. 70(4A) inserted (31.10.2011) by [The Social Security \(Disability Living Allowance, Attendance Allowance and Carers Allowance\) \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2426\)](#), **reg. 5(3)**
- F96** S. 70(5)(6) repealed (28.10.2002) by [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(1)(a), **3(2)** (with art. 4)
- F97** Words in s. 70(7) substituted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Universal Credit and Miscellaneous Amendments Regulations 2015 \(S.I. 2015/1754\)](#), regs. 1(1), **11(2)(a)**
- F98** Words in s. 70(7) substituted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Universal Credit and Miscellaneous Amendments Regulations 2015 \(S.I. 2015/1754\)](#), regs. 1(1), **11(2)(b)**
- F99** S. 70(7A) inserted (3.11.2015 with effect in accordance with reg. 1(3) of the amending S.I.) by [The Universal Credit and Miscellaneous Amendments Regulations 2015 \(S.I. 2015/1754\)](#), regs. 1(1), **11(3)**
- F100** Words in s. 70(9) substituted (1.9.2002 for specified purposes, 1.4.2003 in so far as not already in force) by [The Regulatory Reform \(Carers Allowance\) Order 2002 \(S.I. 2002/1457\)](#), arts. 1(1)(b), 2(2), **Sch. para. 2(c)**
- F101** S. 70(10) omitted (28.10.1994) by virtue of [The Social Security \(Severe Disablement Allowance and Invalid Care Allowance\) Amendment Regulations 1994 \(S.I. 1994/2556\)](#), **reg. 2(3)(c)**

### *Disability living allowance*

#### 71 **Disability living allowance.**

- (1) Disability living allowance shall consist of a care component and a mobility component.

*Status: Point in time view as at 21/03/2022.*

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- (2) A person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.
- (3) A person may be awarded either component for a fixed period or [<sup>F34</sup>for an indefinite period], but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.
- (4) The weekly rate of a person's disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.
- (5) The weekly rate of a person's disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.
- (6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Great Britain.
- [<sup>F35</sup>(7) A person shall not be entitled to a disability living allowance while they are entitled to [<sup>F36</sup>adult disability payment or child disability payment].]

#### Textual Amendments

- F34** Words in s. 71(3) substituted (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 67\(1\), 89\(1\)](#); S.I. 1999/3309, art. 2(3)
- F35** S. 71(7) inserted (26.7.2021) by [The Scotland Act 2016 \(Social Security\) \(Consequential Provision\) \(Miscellaneous Amendment\) Regulations 2021 \(S.I. 2021/804\)](#), regs. 1(2), **2(2)**
- F36** Words in s. 71(7) substituted (21.3.2022 with effect in accordance with reg. 1(1) of the amending S.I.) by [The Scotland Act 2016 \(Social Security\) \(Adult Disability Payment and Child Disability Payment\) \(Amendment\) Regulations 2022 \(S.I. 2022/335\)](#), **reg. 2(3)**

## 72 The care component.

- (1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—
  - (a) he is so severely disabled physically or mentally that—
    - (i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods); or
    - (ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or
  - (b) he is so severely disabled physically or mentally that, by day, he requires from another person—
    - (i) frequent attention throughout the day in connection with his bodily functions; or
    - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
  - (c) he is so severely disabled physically or mentally that, at night,—
    - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or

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- (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.

[<sup>F37</sup>(1A) In its application to a person in relation to so much of a period as falls before the day on which he reaches the age of 16, subsection (1) has effect subject to the following modifications—

- (a) the condition mentioned in subsection (1)(a)(ii) shall not apply, and
- (b) none of the other conditions mentioned in subsection (1) shall be taken to be satisfied unless—
  - (i) he has requirements of a description mentioned in the condition substantially in excess of the normal requirements of persons of his age, or
  - (ii) he has substantial requirements of such a description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.]

(2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—

- (a) throughout—
  - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
  - (ii) such other period of 3 months as may be prescribed,
 he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
- (b) he is likely to continue to satisfy one or other of those conditions throughout—
  - (i) the period of 6 months beginning with that date; or
  - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

[<sup>F38</sup>(2A) The modifications mentioned in subsection (1A) shall have effect in relation to the application of subsection (1) for the purposes of subsection (2), but only—

- (a) in the case of a person who is under the age of 16 on the date on which the award of the care component would begin, and
- (b) in relation to so much of any period mentioned in subsection (2) as falls before the day on which he reaches the age of 16.]

(3) Three weekly rates of the care component shall be prescribed.

(4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—

- (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
- (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
- (c) the lowest rate in any other case.

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(5) For the purposes of this section, a person who is terminally ill, as defined in section 66(2) above, and makes a claim expressly on the ground that he is such a person, shall [F39(notwithstanding subsection (1A)(b))] be taken—

- (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and
- (b) to satisfy or to be likely to satisfy those conditions for [F40] for so much of the period for which he is terminally ill as does not fall before the date of the claim].

[F41](6) . . . . .

(7) Subject to [F42]subsection (5)] above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.

[F43](7A) Subsection (1A) has effect subject to regulations made under subsection (7) (except as otherwise prescribed).]

[F44](7B) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to the care component of a disability living allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]

[F45](8) Regulations may provide that no amount in respect of a disability living allowance which is attributable to entitlement to the care component shall be payable in respect of a person for a period when he is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(9) The reference in subsection (8) to a care home is to an establishment that provides accommodation together with nursing or personal care.

(10) The following are qualifying services for the purposes of subsection (8)—

- (a) accommodation,
- (b) board, and
- (c) personal care.

(11) The reference in subsection (8) to a specified enactment is to an enactment which is, or is of a description, specified for the purposes of that subsection by regulations.

(12) The power to specify an enactment for the purposes of subsection (8) includes power to specify it only in relation to its application for a particular purpose.

(13) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

#### Textual Amendments

**F37** S. 72(1A) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), ss. 52(2), 70(2); S.I. 2007/2819, art. 2(1)(b)

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- F38** S. 72(2A) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 52(3)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F39** Words in s. 72(5) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 52(4)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F40** Words in s. 72(5)(b) substituted (12.1.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 67(2)**, 89(1); S.I. 1999/3309, art. 2(3)
- F41** S. 72(6) repealed (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 52(5)**, 70(2), **Sch. 8**; S.I. 2007/2819, art. 2(1)(b)(e)
- F42** Words in s. 72(7) substituted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 52(6)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F43** S. 72(7A) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 52(7)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F44** S. 72(7B) inserted (31.10.2011) by [The Social Security \(Disability Living Allowance, Attendance Allowance and Carers Allowance\) \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/2426\)](#), **reg. 5(4)**
- F45** S. 72(8)-(13) substituted for s. 72(8) (1.10.2007 for specified purposes, 29.10.2007 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 60(2)**, 70(2); S.I. 2007/2819, art. 2(2)(a)(b)

### 73 The mobility component.

- (1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over [<sup>F46</sup>the relevant age] and throughout which—
- (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or
  - [<sup>F47</sup>(ab) he falls within subsection (1AB) below; or
  - (b) he does not fall within that subsection but does fall within subsection (2) below; or]
  - (c) he falls within subsection (3) below; or
  - (d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

[<sup>F48</sup>(1A) In subsection (1) above “the relevant age” means—

- (a) in relation to the conditions mentioned in paragraph (a), [<sup>F49</sup>(ab),] (b) or (c) of that subsection, the age of 3;
- (b) in relation to the conditions mentioned in paragraph (d) of that subsection, the age of 5.]

[<sup>F50</sup>(1AB) A person falls within this subsection if—

- (a) he has such severe visual impairment as may be prescribed; and
  - (b) he satisfies such other conditions as may be prescribed.]
- (2) A person falls within this subsection if—
- (a) he is both blind and deaf; and
  - (b) he satisfies such other conditions as may be prescribed.
- (3) A person falls within this subsection if—
- (a) he is severely mentally impaired; and
  - (b) he displays severe behavioural problems; and

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(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.

[<sup>F51</sup>(4A) In its application to a person in relation to so much of a period as falls before the day on which he reaches the age of 16, subsection (1) has effect subject to the modification that the condition mentioned in paragraph (d) shall not be taken to be satisfied unless—

- (a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require, or
- (b) persons of his age in normal physical and mental health would not require such guidance or supervision.]

(5) <sup>F52</sup>... circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.

[<sup>F53</sup>(5A) Subsection (4A) has effect subject to regulations made under subsection (5) (except as otherwise prescribed).]

(6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.

(7) A person who is to be taken for the purposes of section 72 above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

(8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.

(9) A person shall not be entitled to the mobility component of a disability living allowance unless—

- (a) throughout—
  - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
  - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)[<sup>F54</sup>(a) to (d)] above; and
- (b) he is likely to continue to satisfy one or other of those conditions throughout—
  - (i) the period of 6 months beginning with that date; or
  - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

[<sup>F55</sup>(9A) The modifications mentioned in subsection (4A) shall have effect in relation to the application of subsection (1) for the purposes of subsection (9), but only—

- (a) in the case of a person who is under the age of 16 on the date on which the award of the mobility component would begin, and
- (b) in relation to so much of any period mentioned in subsection (9) as falls before the day on which he reaches the age of 16.]

(10) Two weekly rates of the mobility component shall be prescribed.

(11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—

- (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), [<sup>F56</sup>(ab),] (b) and (c) above throughout both the period

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- mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
- (b) the lower rate in any other case.
- (12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 66(2) above, and who makes a claim expressly on the ground that he is such a person—
- (a) subsection (9)(a) above shall be omitted; and
- (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.
- (13) Regulations may prescribe cases in which a person who has the use—
- (a) of an invalid carriage or other vehicle provided by [<sup>F57</sup>the Welsh Ministers under paragraph 9 of Schedule 1 to the National Health Service (Wales) Act 2006, or the Secretary of State under paragraph 9 of Schedule 1 to the National Health Service Act 2006] or under section 46 of the <sup>M1</sup>National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the <sup>M2</sup>Health and Personal Social Services (Northern Ireland) Order 1972; or
- (b) of any prescribed description of appliance supplied under the enactments relating to the National Health Service being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,
- is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.
- (14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person’s means.

#### Textual Amendments

- F46** Words in s. 73(1) substituted (9.4.2001) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 67\(3\), 89\(1\)](#) (with s. 67(4)); S.I. 2000/1382, art. 2(d)
- F47** S. 73(1)(ab)(b) substituted for s. 73(1)(b) (11.4.2010 for specified purposes, 15.10.2010 for specified purposes, 11.4.2011 in so far as not already in force) by [Welfare Reform Act 2009 \(c. 24\), ss. 14\(2\), 61\(3\)](#); S.I. 2010/293, art. 2(2)(a)(b)(c)
- F48** S. 73(1A) inserted (9.4.2001) by [Welfare Reform and Pensions Act 1999 \(c. 30\), ss. 67\(3\), 89\(1\)](#) (with s. 67(4)); S.I. 2000/1382, art. 2(d)
- F49** Word in s. 73(1A)(a) inserted (11.4.2010 for specified purposes, 15.10.2010 for specified purposes, 11.4.2011 in so far as not already in force) by [Welfare Reform Act 2009 \(c. 24\), ss. 14\(3\), 61\(3\)](#); S.I. 2010/293, art. 2(2)(a)(b)(c)
- F50** S. 73(1AB) inserted (11.4.2010 for specified purposes, 15.10.2010 for specified purposes, 11.4.2011 in so far as not already in force) by [Welfare Reform Act 2009 \(c. 24\), ss. 14\(4\), 61\(3\)](#); S.I. 2010/293, art. 2(2)(a)(b)(c)
- F51** S. 73(4A) substituted for s. 73(4) (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\), ss. 53\(2\), 70\(2\)](#); S.I. 2007/2819, art. 2(1)(b)
- F52** Words in s. 73(5) repealed (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\), ss. 53\(3\), 70\(2\), Sch. 8](#); S.I. 2007/2819, art. 2(1)(b)(e)



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- F53** S. 73(5A) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 53(4)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F54** Words in s. 73(9)(a) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), **Sch. 7 para. 2(2)**; S.I. 2007/2819, art. 2(1)(d)
- F55** S. 73(9A) inserted (1.10.2007) by [Welfare Reform Act 2007 \(c. 5\)](#), **ss. 53(5)**, 70(2); S.I. 2007/2819, art. 2(1)(b)
- F56** Word in s. 73(11)(a) inserted (11.4.2010 for specified purposes, 15.10.2010 for specified purposes, 11.4.2011 in so far as not already in force) by [Welfare Reform Act 2009 \(c. 24\)](#), **ss. 14(5)**, 61(3); S.I. 2010/293, art. 2(2)(a)(b)(c)
- F57** Words in s. 73(13)(a) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 145** (with Sch. 3 Pt. 1)

#### Marginal Citations

- M1** 1978 c. 29.  
**M2** S.I.1972/1265 (N.I.14).

## 74 Mobility component for certain persons eligible for invalid carriages.

- (1) Regulations may provide for the issue, variation and cancellation of certificates in respect of prescribed categories of persons to whom this section applies; and a person in respect of whom such a certificate is issued shall, during any period while the certificate is in force, be deemed for the purposes of section 73 above to satisfy the condition mentioned in subsection (1)(a) of that section and to fall within paragraphs (a) and (b) of subsection (9) by virtue of having satisfied or being likely to satisfy that condition throughout both the periods mentioned in those paragraphs.
- (2) This section applies to any person whom the Secretary of State considers—
- was on 1st January 1976 in possession of an invalid carriage or other vehicle provided in pursuance of section 33 of the <sup>M3</sup>Health Services and Public Health Act 1968 (which related to vehicles for persons suffering from physical defect or disability) or receiving payments in pursuance of subsection (3) of that section; or
  - had at that date, or at a later date specified by the Secretary of State, made an application which the Secretary of State approved for such a carriage or vehicle or for such payments; or
  - was, both at some time during a prescribed period before that date and at some time during a prescribed period after that date, in possession of such a carriage or vehicle or receiving such payments; or
  - would have been, by virtue of any of the preceding paragraphs, a person to whom this section applies but for some error or delay for which in the opinion of the Secretary of State the person was not responsible and which was brought to the attention of the Secretary of State within the <sup>M4</sup>period of one year beginning with 30th March 1977 (the date of the passing of the Social Security (Miscellaneous Provisions) Act 1977, section 13 of which made provision corresponding to the provision made by this section).

#### Marginal Citations

- M3** 1968 c. 46.  
**M4** 1977 c. 5.

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## 75 [F58] **Persons who have attained pensionable age**

- (1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains [F59] pensionable age] otherwise than by virtue of an award made before he attains that age.
- (2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, other than section 74 above, so far as it so relates, and any provision of the Administration Act which is relevant to disability living allowance—
  - (a) shall have effect subject to modifications, additions or amendments; or
  - (b) shall not have effect.

### Textual Amendments

**F58** S. 75 heading substituted (6.12.2018) by *Pensions Act 2007 (c. 22)*, s. 13(3), **Sch. 1 para. 42(3)**

**F59** Words in s. 75(1) substituted (6.12.2018) by *Pensions Act 2007 (c. 22)*, s. 13(3), **Sch. 1 para. 42(2)**

## 76 **Disability living allowance - supplementary.**

- (1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.
- (2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.
- (3) For the purposes of sections 72(5) and 73(12) above where—
  - (a) a person purports to make a claim for a disability living allowance on behalf of another; and
  - (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,
 that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority.

### *Guardian's allowance*

## 77 **Guardian's allowance.**

- (1) A person shall be entitled to a guardian's allowance in respect of a child [F60] or qualifying young person] if—
  - (a) he is entitled to child benefit in respect of that child [F61] or qualifying young person], and
  - (b) the circumstances are any of those specified in subsection (2) below.

F62  
...

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- (2) The circumstances referred to in subsection (1)(b) above are—
  - (a) that both of the [<sup>F63</sup>parents of the child or qualifying young person] are dead; or
  - (b) that one of the [<sup>F63</sup>parents of the child or qualifying young person] is dead and the person claiming a guardian's allowance shows that he was at the date of the death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent; or
  - (c) that one of the [<sup>F63</sup>parents of the child or qualifying young person] is dead and the other is in prison.
- (3) There shall be no entitlement to a guardian's allowance in respect of a child [<sup>F64</sup>or qualifying young person] unless at least one of the [<sup>F65</sup>parents of the child or qualifying young person] satisfies, or immediately before his death satisfied, such conditions as may be prescribed as to nationality, residence, place of birth or other matters.
- (4) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child [<sup>F66</sup>or qualifying young person], payment of an amount by way of a guardian's allowance, that amount shall not be payable unless one of the conditions specified in subsection (5) below is satisfied.
- (5) Those conditions are—
  - (a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child [<sup>F67</sup>or qualifying young person] living with him; or
  - (b) that the requisite contributions are being made to the cost of providing for the child [<sup>F67</sup>or qualifying young person].
- (6) The condition specified in subsection (5)(b) above is to be treated as satisfied if, but only if—
  - (a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (4) above—
    - (i) by the beneficiary; or
    - (ii) where the beneficiary is one of two spouses [<sup>F68</sup>or civil partners] residing together, by them together; and
  - (b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 143(1)(b) below.
- (7) A guardian's allowance in respect of a child [<sup>F69</sup>or qualifying young person] shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 5.
- (8) Regulations—
  - (a) may modify subsection (2) or (3) above in relation to cases in which a child [<sup>F70</sup>or qualifying young person] has been adopted or is illegitimate, or the marriage of [<sup>F71</sup>the parents of a child or qualifying young person] has been terminated by divorce [<sup>F72</sup>or the civil partnership of the child's parents has been dissolved];
  - (b) shall prescribe the circumstances in which a person is to be treated for the purposes of this section as being in prison (by reference to his undergoing a sentence of imprisonment for life or of a prescribed minimum duration, or to his being in legal custody in prescribed circumstances); and
  - (c) may, for cases where entitlement to a guardian's allowance is established by reference to a person being in prison, provide—
    - (i) for requiring him to pay to the National Insurance Fund sums paid by way of a guardian's allowance;

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- (ii) for suspending payment of an allowance where a conviction, sentence or order of a court is subject to appeal, and for matters arising from the decision of an appeal;
  - (iii) for reducing the rate of an allowance in cases where the person in prison contributes to the cost of providing for the child [<sup>F70</sup>or qualifying young person].
- (9) Where [<sup>F73</sup>a man and woman are married to, or civil partners of, each other and are residing together,] and, apart from this subsection, they would each be entitled to a guardian's allowance in respect of the same child [<sup>F74</sup>or qualifying young person], only [<sup>F75</sup>the woman] shall be entitled, but payment may be made either to her or to him unless she elects in the prescribed manner that payment is not to be made to him.
- (10) Subject to subsection (11) below, no person shall be entitled to a guardian's allowance in respect of a child [<sup>F76</sup>or qualifying young person] of which he or she is the parent.
- (11) Where a person—
- (a) has adopted a child [<sup>F77</sup>or qualifying young person ]; and
  - (b) was entitled to guardian's allowance in respect of the child [<sup>F77</sup>or qualifying young person ] immediately before the adoption,
- subsection (10) above shall not terminate his entitlement.

#### Textual Amendments

- F60** Words in s. 77(1) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(2)(a)**
- F61** Words in s. 77(1) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(2)(b)**
- F62** Words in s. 77(1) repealed with savings (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6; S.I. 2003/938, art. 2, Sch. (with art. 3)**
- F63** Words in s. 77(2) substituted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(3)**
- F64** Words in s. 77(3) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(4)(a)**
- F65** Words in s. 77(3) substituted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(4)(b)**
- F66** Words in s. 77(4) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(5)**
- F67** Words in s. 77(5) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(6)**
- F68** Words in s. 77(6)(a)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 34(a); S.I. 2005/3175, art. 2(1), Sch. 1**
- F69** Words in s. 77(7) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(7)**
- F70** Words in s. 77(8) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(8)(a)**
- F71** Words in s. 77(8) substituted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(8)(b)**
- F72** Words in s. 77(8)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 34(b); S.I. 2005/3175, art. 2(1), Sch. 1**
- F73** Words in s. 77(9) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 14(3)(a)**
- F74** Words in s. 77(9) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(9)**
- F75** Words in s. 77(9) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 14(3)(b)**
- F76** Words in s. 77(10) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(10)**
- F77** Words in s. 77(11) inserted (10.4.2006) by Child Benefit Act 2005 (c. 6), s. 6(2), **Sch. 1 para. 4(11)**

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**Modifications etc. (not altering text)**

- C3** S. 77 modified by [The Social Security Benefit \(Dependency\) Regulations 1977 \(S.I. 1977/343\)](#), **reg. 4B** (as substituted (9.4.2001) by [S.I. 2000/1483](#), **regs. 1, 5**)

*Benefits for the aged*

**78 Category C and Category D retirement pensions and other benefits for the aged.**

<sup>F78</sup>(1) .....

<sup>F79</sup>(2) .....

(3) A person who is over the age of 80 [<sup>F80</sup>, who reached pensionable age before 6 April 2016 and who satisfies] such conditions as may be prescribed shall be entitled to a Category D retirement pension at the appropriate weekly rate if—

- (a) he is not entitled to a Category A, Category B or Category C retirement pension; or
- (b) he is entitled to such a pension, but it is payable at a weekly rate which, disregarding those elements specified in subsection (4) below, is less than the appropriate weekly rate.

(4) The elements referred to in subsection (3)(b) above are—

- (a) any additional pension;
- (b) any increase so far as attributable to—
  - (i) any additional pension, or
  - (ii) any increase in a guaranteed minimum pension;
- (c) any graduated retirement benefit; and

<sup>F81</sup>(d) .....

<sup>F82</sup>(5) .....

(6) The appropriate weekly rate of a Category D retirement pension shall be that specified in Schedule 4, Part III, paragraph 7.

(7) Entitlement to a <sup>F83</sup>... Category D retirement pension shall continue throughout the pensioner's life.

(8) A <sup>F84</sup>... Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

(9) Regulations may provide for the payment—

- (a) to a widow whose husband was over pensionable age on 5th July 1948; or
- (b) to a woman whose marriage to a husband who was over pensionable age on that date was terminated otherwise than by his death,

of a Category C retirement pension or of benefit corresponding to a widow's pension or a widowed mother's allowance; and any such retirement pension or any such benefit shall be at the prescribed rate.

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#### Textual Amendments

- F78** S. 78(1) omitted (6.4.2016) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 80(2)**
- F79** S. 78(2) omitted (6.4.2016) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 80(2)**
- F80** Words in s. 78(3) substituted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 84**
- F81** S. 78(4)(d) repealed (6.4.2010 with savings until 6.4.2020) by Pensions Act 2007 (c. 22), ss. 4(4), 27(4)(b), **Sch. 1 para. 13, Sch. 7 Pt. 2** (with s. 4(5)-(8))
- F82** S. 78(5) omitted (6.4.2016) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 80(2)**
- F83** Words in s. 78(7) omitted (6.4.2016) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 80(3)**
- F84** Words in s. 78(8) omitted (6.4.2016) by virtue of Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 80(3)**

#### 79 Age addition.

- (1) A person who is over the age of 80 and entitled to a retirement pension of any category [<sup>F85</sup>under this Act] shall be entitled to an increase of the pension, to be known as “age addition”.
- (2) Where a person is in receipt of a pension or allowance payable by the Secretary of State by virtue of any prescribed enactment or instrument (whether passed or made before or after this Act) and—
  - (a) he is over the age of 80; and
  - (b) he fulfils such other conditions as may be prescribed,
 he shall be entitled to an increase of that pension or allowance, also known as age addition.
- (3) Age addition shall be payable for the life of the person entitled, at the weekly rate specified in Schedule 4, Part III, paragraph 8.

#### Textual Amendments

- F85** Words in s. 79(1) inserted (6.4.2016) by Pensions Act 2014 (c. 19), s. 56(4), **Sch. 12 para. 85**

**Status:**

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**Changes to legislation:**

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