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 S T A T U T O R Y   I N S T R U M E N T S
 

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1979 No. 1684

## SOCIAL SECURITY

**The Social Security (Attendance Allowance)  
Amendment (No. 2) Regulations 1979**

*Made* - - - - 17th December 1979  
*Laid before Parliament* 21st December 1979  
*Coming into Operation* 14th January 1980

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 35(1) and (6) and 106 of the Social Security Act 1975(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals as required by section 10(1) of the Tribunals and Inquiries Act 1971(b), hereby makes the following regulations which relate only to matters which, in accordance with the said Act of 1975, have been referred to the Attendance Allowance Board and which, by virtue of section 139(2) of, and paragraph 16 of Schedule 15 to, that Act, do not require prior reference to the National Insurance Advisory Committee:—

*Citation, commencement and interpretation*

**1.**—(1) These regulations may be cited as the Social Security (Attendance Allowance) Amendment (No. 2) Regulations 1979 and shall come into operation on 14th January 1980.

(2) In these regulations the Social Security (Attendance Allowance) (No. 2) Regulations 1975(c) are referred to as “the principal regulations”.

*Amendment of regulation 4 of the principal regulations*

**2.** Regulation 4 of the principal regulations (adults in certain accommodation other than hospitals) shall be amended by substituting for all the words after “the Schedule to these regulations” the following—

“not being, in the case of a person who has not attained the age of 18 where accommodation is provided in pursuance of section 21(1)(b) of, and paragraph 2 of Schedule 8 to, the National Health Service Act 1977(d), accommodation in a private dwelling”.

*Amendment of regulation 7 of the principal regulations*

**3.**—(1) Regulation 7 of the principal regulations (children in hospital and certain other accommodation) shall be amended in accordance with the following provisions of this regulation.

(a) 1975 c. 14.

(b) 1971 c. 62.

(c) S.I. 1975/598; the relevant amending instrument is S.I. 1977/1361.

(d) 1977 c. 49.

(2) For paragraph (1)(b) there shall be substituted the following paragraph—

“(b) the child is living in accommodation provided for him in pursuance of, or provided for him in circumstances in which the cost of the accommodation is or may be borne wholly or partly out of public or local funds in pursuance of, any of the enactments mentioned in the Schedule to these regulations not being, in a case where accommodation is provided in pursuance of section 21(1)(b) of, and paragraph 2 of Schedule 8 to, the National Health Service Act 1977, accommodation in a private dwelling; or”

(3) At the end of the regulation there shall be added the following paragraph—

“(5) For the purposes of paragraph (1)(b), a child who is under the care of a local authority shall not be treated as living in accommodation described in that sub-paragraph while he is allowed to be under the charge and control of, and is living with, his mother or his father.”

*Amendment of regulation 9 of the principal regulations*

4. Regulation 9 of the principal regulations (reviews of determinations made by the Board) shall be amended by the substitution, for paragraph (2) of that regulation (notification of determination on application for review), of the following paragraphs:—

“(2) Where the Board, having where appropriate given leave under regulation 8(2), have reviewed a determination or have refused to review a determination, the claimant and the Secretary of State shall be notified in writing of the determination on the review or of that refusal, as the case may be, and, where review is refused or the determination on review is not more favourable to the claimant than the determination reviewed, the claimant and the Secretary of State shall, subject to the provisions of paragraph (3), also be notified in writing of the reasons for such refusal or determination, and the claimant shall be notified of the conditions governing an appeal to a Commissioner.

(3) If he consents to forego it, a claimant need not be notified of the reasons for a determination on review when it takes place.

(4) Where notification of a determination on review is given to the claimant without a statement of the reasons for it, he shall at the same time be notified of the conditions governing an appeal to a Commissioner and of his right under paragraph (5) to be provided with such a statement.

(5) Where a statement of reasons was not sent with the determination on review the claimant or the Secretary of State may, within 3 months from the date on which a notification of the determination was sent to the claimant or within such further time as the Board may for special reasons allow, make a request in writing for notification of the reasons for the determination whereupon the claimant and the Secretary of State shall be notified in writing of those reasons and the claimant shall again be notified of the conditions governing an appeal to a Commissioner.”

*Amendment of regulation 10 of the principal regulations*

5. Regulation 10 of the principal regulations (appeals to a Commissioner on a question of law) shall be amended by the substitution, for paragraph (2) of that regulation, of the following paragraph:—

“(2) An application for leave to appeal by virtue of paragraph (1) shall

be made in writing to a Commissioner within 3 months, or within such further time as a Commissioner may for special reasons allow, from the date on which there was sent to the claimant:—

- (a) if reasons in writing were sent to him at the same time, notification of refusal to review, or of the determination on review, as the case may be, or
- (b) where sent later under regulation 9(5), notification of the reasons for any determination on review, or
- (c) if the Board refused to extend time for applying for reasons under regulation 9(5), notification of the refusal,

and every such application shall include a statement of the question of law in respect of which it is alleged that the determination or refusal to review by the Board is erroneous and on which it is wished to appeal.”

*Amendment of the Schedule to the principal regulations*

6.—(1) The Schedule to the principal regulations (attendance allowance not payable to persons living in accommodation provided in pursuance of, or provided wholly or partly at public expense in pursuance of, any of the enactments specified) shall be amended in accordance with the following provisions of this regulation.

(2) In column 3 of the said Schedule after the reference to Part III of the National Assistance Act 1948(a) the words “other than section 21(1)(b)” shall be omitted.

(3) In the said Schedule references to:—

- (a) “1947 c. 27. The National Health Service (Scotland) Act 1947. Section 27(1)”, and
- (b) “1968 c. 46. The Health Services and Public Health Act 1968. Section 12”

shall be omitted.

(4) At the end of the said Schedule there shall be added in the appropriate columns references to:—

- (a) “1973 c. 50. The Employment and Training Act 1973. Section 2(1) and (2)(d)”, and
- (b) “1977 c. 49. The National Health Service Act 1977. Section 21(1)(b) and paragraph 2 of Schedule 8”.
- (c) “1978 c. 29. The National Health Service (Scotland) Act 1978. Section 37.”

*Revocations*

7. Paragraphs (1)(d) and (e), (3) and (5) of regulation 2 of the principal regulations (entitlement conditions relating to residence and presence in Great Britain) are hereby revoked, and (in consequence of amendments made by these regulations) regulations 2, 3 and 5 of the Social Security (Attendance Allowance) Amendment Regulations 1977(b) are also hereby revoked.

*Patrick Jenkin,*

Secretary of State for Social Services.

17th December 1979.

(a) 1948 c. 29.

(b) S.I. 1977/1361.

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations, which amend the Social Security (Attendance Allowance) (No. 2) Regulations 1975 ("the principal regulations") come into operation on 14th January 1980. Regulations 2 and 3 vary provisions of the principal regulations concerning non-payability of allowances for persons in accommodation provided at public expense. Regulation 4 removes the obligation of the Attendance Allowance Board to give reasons in writing when making decisions on review favourable to claimants and in cases where claimants forego their rights to be given reasons but it enables them and the Secretary of State subsequently to apply for such reasons. Regulation 5 makes consequential amendments to provisions stating the time limits for appeals to the Commissioner. Regulation 6 updates some references to the enactments specified in the Schedule to the principal regulations. Regulation 7 removes conditions formerly applicable to persons born outside the UK and to aliens.

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