

STATUTORY INSTRUMENTS

1987 No. 1968

The Social Security (Claims and Payments) Regulations 1987

PART VI

[^{F1}MOBILITY COMPONENT OF DISABILITY LIVING ALLOWANCE
AND DISABILITY LIVING ALLOWANCE FOR CHILDREN]

Textual Amendments

- F1** Pt. VI heading substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **19(a)**

Claim and award for period beginning after the date on which the claim is received

^{F2}**39.**

Textual Amendments

- F2** Regs. 39-41 omitted (3.2.1992) by virtue of [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **19(b)**

Claim received within 6 months after the end of a period for which allowance awarded

^{F2}**40.**

Textual Amendments

- F2** Regs. 39-41 omitted (3.2.1992) by virtue of [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **19(b)**

Obligations of persons in respect of whom allowances are claimed or awarded and disqualification for failure to comply

^{F2}**41.**

Textual Amendments

- F2** Regs. 39-41 omitted (3.2.1992) by virtue of [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **19(b)**

Status: Point in time view as at 10/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Social Security (Claims and Payments) Regulations 1987, PART VI. (See end of Document for details)

Cases where allowance not to be payable

42.—(1) Subject to the provisions of this regulation, [^{F3}disability living allowance by virtue of entitlement to the mobility component] shall not be payable to any person who would otherwise be entitled to it in respect of any period—

- (a) during which that person has the use of an invalid carriage or other vehicle provided by the Secretary of State under section 5(2) of and Schedule 2 to the National Health Service Act 1977 ^{M1} or section 46 of the National Health Service (Scotland) Act 1978 ^{M2} which is a vehicle propelled by petrol engine or by electric power supplied for use on the road and to be controlled by the occupant; or
- (b) in respect of which that person has received, or is receiving, any payment—
 - (i) by way of grant under the said section 5(2) and Schedule 2 or section 46 towards the costs of running a private car, or
 - (ii) of mobility supplement under the Naval, Military and Air Forces etc, (Disablement and Death) Service Pensions Order 1983 ^{M3} or the Personal Injuries (Civilians) Scheme 1983 ^{M4}, or under the said Order by virtue of the War Pensions (Naval Auxiliary Personnel) Scheme 1964 ^{M5}, the Pensions (Polish Forces) Scheme 1964 ^{M6}, the War Pensions (Mercantile Marine) Scheme 1964 ^{M7} or an Order of Her Majesty in relation to the Home Guard dated 21st December 1964 ^{M8} or 22nd December 1964 ^{M9}, or in relation to the Ulster Defence Regiment dated 4th January 1971 ^{M10}

or any payment out of public funds which the Secretary of State is satisfied is analogous thereto.

(2) A person who has notified the Secretary of State that he no longer wishes to use such an invalid carriage or other vehicle as is referred to in paragraph (1)(a) and has signed an undertaking that he will not use it while it remains in his possession awaiting collection, shall be treated, for the purposes of this regulation, as not having the use of that invalid carriage or other vehicle.

(3) Where a person in respect of whom [^{F4}disability living allowance] is claimed for any period has received any such payment as referred to in paragraph (1)(b) for a period which, in whole or in part, covers the period for which the allowance is claimed, such payment shall be treated as an aggregate of equal weekly amounts in respect of each week in the period for which it is made and, where in respect of any such week a person is treated as having a weekly amount so calculated which is less than the weekly rate of [^{F5}mobility component of disability living allowance to which, apart from paragraph (1), he would be entitled], any allowance to which that person may be entitled for that week shall be payable at a weekly rate reduced by the weekly amount so calculated.

(4) In a case where the Secretary of State has issued a certificate to the effect that he is satisfied—

- (a) that the person in question either—
 - (i) has purchased or taken on hire or hire-purchase or
 - (ii) intends to purchase or take on hire or hire-purchase a private car or similar vehicle (“the car”) for a consideration which is more than nominal, on or about a date (not being earlier than 13th January 1982) specified in the certificate (“the said date”);
- (b) that that person intends to retain possession of the car at least during, and to learn to drive it within, the period of 6 months or greater or lesser length of time as may be specified in the certificate (“the said period”) beginning on the said date; and
- (c) that that person will use [^{F6}disability living allowance by virtue of entitlement to the mobility component] in whole or in part during the said period towards meeting the expense of acquiring the car,

paragraph (1)(a) shall not apply, and shall be treated as having never applied, during a period beginning on the said date and ending at the end of the said period or (if earlier) the date on which the Secretary of State cancels the certificate because that person has parted with possession of the car or for any other reason.

Textual Amendments

- F3** Words in reg. 42(1) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **20(a)**
- F4** Words in reg. 42(3) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **20(b)(i)**
- F5** Words in reg. 42(3) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **20(b)(ii)**
- F6** Words in reg. 42(4)(c) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **20(c)**

Marginal Citations

- M1** 1977 c. 49.
- M2** 1978 c. 29.
- M3** [S.I. 1983/883](#), as amended by [S.I. 1983/1116](#), 1521, 1986/592.
- M4** [S.I. 1983/686](#), amended by [S.I. 1983/1164](#), 1540, 1984/1289, 1986/628.
- M5** [S.I. 1964/1985](#).
- M6** [S.I. 1964/2007](#), as extended by [S.I. 1967/293](#), 1972/95, 1981/1876.
- M7** [S.I. 1964/2058](#).
- M8** Cmnd 2563.
- M9** Cmnd 2564.
- M10** Cmnd 4567.

Children

43.—(1) In any case where a claim for [^{F7}disability living allowance] for a child is received by the Secretary of State, he shall, in accordance with the following provisions of this regulation, appoint a person to exercise, on behalf of that child, any right to which he may be entitled under the Social Security Act 1975 in connection with [^{F7}disability living allowance] and to receive and deal on his behalf with any sums payable by way of [^{F7}that allowance].

(2) Subject to the following provisions of this regulation, a person appointed by the Secretary of State under this regulation to act on behalf of the child shall—

- (a) be a person with whom the child is living; and
- (b) be over the age of 18 [^{F8}or, if the person is a parent of the child and living with him, be over the age of 16]; and
- (c) be either the father or mother of the child, or, if the child is not living with either parent, be such other person as the Secretary of State may determine; and
- (d) have given such undertaking as may be required by the Secretary of State as to the use, for the child's benefit, of any allowance paid.

(3) For the purpose of paragraph (2)(a), a person with whom a child has been living shall, subject to paragraph (4) and to the power of the Secretary of State to determine in any case that the provisions of this paragraph should not apply, be treated as continuing to live with that child during any period—

- (a) during which that person and the child are separated but such separation has not lasted for a continuous period exceeding [^{F9}12 weeks]; or

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- (b) during which the child is absent by reason only of the fact that he is receiving full-time education at a school; or
- (c) during which the child is absent and undergoing medical or other treatment as an in-patient in a hospital or similar institution; or
- (d) during such other period as the Secretary of State may in any particular case determine:

Provided that where the absence of the child under (b) has lasted for a continuous period of 26 weeks or the child is absent under (c), that person shall only be treated as continuing to live with that child if he satisfies the Secretary of State that he has incurred, or has undertaken to incur, expenditure for the benefit of the child of an amount not less than the allowance payable in respect of such period of absence.

(4) Where a child, in respect of whom an allowance is payable, is, by virtue of any provision of an Act of Parliament—

- (a) committed to, or received into the care of, a local authority; or
- (b) subject to a supervision requirement and residing in a residential establishment under arrangements made by a local authority in Scotland;

any appointment made under the foregoing provisions of this regulation shall terminate forthwith:

Provided that, when a child is committed to, or received into, care or is made subject to a supervision requirement for a period which is, and when it began was, not intended to last for more than [F10 12 weeks] the appointment shall not terminate by virtue of this paragraph until such period has lasted for [F10 12 weeks] .

(5) In any case where an appointment on behalf of any child in the care of, or subject to a supervision requirement under arrangements made by, a local authority is terminated in accordance with paragraph (4), the Secretary of State may, upon application made to him by that local authority or by an officer of such authority nominated for the purpose by that authority, appoint the local authority or nominated officer thereof or appoint such other person as he may, after consultation with the local authority, determine, to exercise on behalf of the child any right to which that child may be entitled under the Act in connection with the allowance and to receive and deal on his behalf with any sums payable to him by way of [F11 disability living allowance] for any period during which he is in the care of, or, as the case may be, subject to a supervision requirement under arrangements made by, that authority.

(6) Where a child is undergoing medical or other treatment as an in-patient in a hospital or similar institution and there is no other person to whom [F12 disability living allowance] may be payable by virtue of an appointment under this regulation, the Secretary of State may, upon application made to him by the [F13 health authority][F14, National Health Service Trust][F15, NHS foundation trust] or, as the case may be, social services authority, controlling the hospital or similar institution in which the child is an in-patient, or by an officer of that authority [F16 or Trust] nominated for the purpose by the authority [F17 or Trust], appoint that authority [F18 or Trust] or the nominated officer thereof or such other person as the Secretary of State may, after consultation with that authority [F19 or Trust], determine, to exercise on behalf of the child any right to which that child may be entitled in connection with the allowance and to receive and deal on his behalf with any sums payable to him by way of [F12 disability living allowance] for any period during which he is an in-patient in a hospital or similar institution under the control of that authority [F20 or Trust].

(7) For the purposes of this regulation—

[F21 “child” means a person under the age of 16;]

“child's father” and “child's mother” include a person who is a child's father or mother by adoption or would be such a relative if an illegitimate child had been born legitimate;

F22
...

[^{F23}“health authority” means—

- (a) ^{F24}...
- (b) in relation to Wales, a Health Authority established under section 8 of that Act; and
- (c) in relation to Scotland, a Health Board within the meaning of the National Health Service (Scotland) Act 1978;]

“hospital or similar institution” means any premises for the reception of and treatment of person suffering from any illness, including any mental disorder, or of persons suffering from physical disability, and any premises used for providing treatment during convalescence or for medical rehabilitation;

“local authority” means, in relation to England and Wales, a local authority as defined in the Local Government Act 1972 ^{M11} and, in relation to Scotland, a local authority as defined in the Local Government (Scotland) Act 1973 ^{M12};

“social services authority” means—

- (a) in relation to England and Wales, the social services committee established by a local authority under section 2 of the Local Authority Social Services Act 1970 ^{M13}; and
- (b) in relation to Scotland, the social work committee established by a local authority under section 2 of the Social Work (Scotland) Act 1968 ^{M14}.

Textual Amendments

- F7** Words in reg. 43(1) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(a)**
- F8** Words in reg. 43(2)(b) inserted (18.3.2005) by [The Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **7(9)(a)**
- F9** Words in reg. 43(3)(a) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(b)**
- F10** Words in reg. 43(4) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(c)**
- F11** Words in reg. 43(5) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(d)**
- F12** Words in reg. 43(6) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(i)**
- F13** Words in reg. 43(6) substituted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\)](#), regs. 1, **Sch. 1 para. 44**
- F14** Words in reg. 43(6) inserted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(ii)**
- F15** Words in reg. 43(6) inserted (1.4.2004) by [The Health and Social Care \(Community Health and Standards\) Act 2003 \(Supplementary and Consequential Provision\) \(NHS Foundation Trusts\) Order 2004 \(S.I. 2004/696\)](#), arts. 1(1)(b), 3(3), **Sch. 3**
- F16** Words in reg. 43(6) inserted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(iii)**
- F17** Words in reg. 43(6) inserted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(iv)**
- F18** Words in reg. 43(6) inserted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(iii)**
- F19** Words in reg. 43(6) inserted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **21(e)(iii)**

Status: Point in time view as at 10/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Social Security (Claims and Payments) Regulations 1987, PART VI. (See end of Document for details)

- F20** Words in reg. 43(6) inserted (3.2.1992) by The Social Security (Claims and Payments) Amendment Regulations 1991 (S.I. 1991/2741), regs. 1(1), **21(e)(iii)**
- F21** Words in reg. 43(7) inserted (18.3.2005) by The Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/337), regs. 1, **7(9)(b)**
- F22** Words in reg. 43(7) omitted (1.10.2002) by virtue of The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 1, **Sch. 1 para. 44**
- F23** Words in reg. 43(7) inserted (1.10.2002) by The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 1, **Sch. 1 para. 44**
- F24** Words in reg. 43(7) omitted (1.4.2013) by virtue of The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 11**

Marginal Citations

- M11** 1972 c. 70.
M12 1973 c. 65.
M13 1970 c. 42.
M14 1968 c. 49.

Payment of [^{F25}disability living allowance] on behalf of a beneficiary

44.—(1) Where, under arrangements made or negotiated by Motability, an agreement has been entered into by or on behalf of a beneficiary in respect of whom [^{F26}disability living allowance is payable by virtue of entitlement to the mobility component at the higher rate] for the hire or hire-purchase of a vehicle, the Secretary of State may arrange that any [^{F26}disability living allowance by virtue of entitlement to the mobility component at the higher rate payable] to the beneficiary shall be paid in whole or in part on behalf of the beneficiary in settlement of liability for payments due under that agreement.

(2) Subject to regulations 45 and 46 an arrangement made by the Secretary of State under paragraph (1) shall terminate at the end of whichever is the relevant period specified in paragraph (3), in the case of hire, or paragraph (4), in the case of a hire-purchase agreement.

(3) In the case of hire the relevant period shall be:—

- (a) where the vehicle is returned to the owner at or before the expiration of the ^{F27}... term of hire, the period of the ^{F27}... term; or
- (b) where the vehicle is retained by or on behalf of the beneficiary with the owner's consent after the expiration of the ^{F27}... term of hire^{F28}, other than where sub-paragraph (d) applies,] the period of the ^{F27}... term; or
- (c) where the vehicle is retained by or on behalf of the beneficiary otherwise than with the owner's consent after the expiration of the ^{F27}... term of hire or its earlier termination, whichever is the longer of the following periods
 - (i) the period ending with the return of the vehicle to the owner; or
 - (ii) the period of the ^{F27}... term of hire^{F29}; or
- ^{F29}(d) where the original term of hire is extended by an agreed variation of the agreement, the period of the extended term.]

(4) In the case of a hire-purchase agreement, the relevant period shall be:—

- (a) the period ending with the purchase of the vehicle; or

- (b) where the vehicle is returned to the owner or is repossessed by the owner under the terms of the agreement before the completion of the purchase, the original period of the agreement.

[^{F30}(5) In this regulation “Motability” means the company, set up under that name as a charity and originally incorporated under the Companies Act 1985 ^{M15} and subsequently incorporated by Royal Charter.]

Textual Amendments

- F25** Words in reg. 44 heading substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **22**
- F26** Words in reg. 44(1) substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), **22**
- F27** Word in reg. 44(3) omitted (18.3.2005) by virtue of [The Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **7(10)(a)**
- F28** Words in reg. 44(3)(b) added (18.3.2005) by [The Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **7(10)(b)**
- F29** Reg. 44(3)(d) and word inserted (18.3.2005) by [The Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **7(10)(c)**
- F30** Words in reg. 44(5) substituted (5.12.1990) by [The Social Security \(Miscellaneous Provisions\) Amendment Regulations 1990 \(S.I. 1990/2208\)](#), regs. 1(1)(c), **13**

Marginal Citations

- M15** 1985 c. 6.

[^{F31}Recovery of expenses

44A.—(1) Paragraph (2) applies where—

- (a) an agreement referred to in regulation 44(1) has been entered into; and
- (b) a relevant provider is receiving payments of disability living allowance in settlement of liability for payments due under that agreement.

(2) The Secretary of State may require the relevant provider to make payments to meet the reasonable expenses of the Secretary of State in administering the making of the payments of disability living allowance to the relevant provider.

(3) The method by which the expenses under paragraph (2) are to be met is for the Secretary of State to issue an invoice to the relevant provider setting out the expenses that have been incurred and for the relevant provider to pay the sum stated to the Secretary of State.

(4) The first invoice issued by the Secretary of State may recover expenses incurred between 21st July 2016 and the date of the invoice.

(5) Subsequently the Secretary of State may issue invoices no more frequently than annually and only in respect of expenses incurred since the period covered by the previous invoice.

(6) The expenses that the Secretary of State may take into account for the purposes of paragraph (2) include—

- (a) the salaries and other costs relating to the employment of staff wholly engaged in the administering of the payments of disability living allowance and where staff have other responsibilities, an apportioned amount of those costs; and
- (b) overheads, including rent and other shared costs, relating to those staff.

(7) In determining what expenses were reasonably incurred in administering the making of payments of disability living allowance to a relevant provider, the Secretary of State must have

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regard to any agreement between the Secretary of State and the relevant provider concerning the level of service to be provided by the Secretary of State in the making of such payments to that relevant provider.]

Textual Amendments

F31 Reg. 44A inserted (21.7.2016) by [The Social Security \(Expenses of Paying Sums in Relation to Vehicle Hire\) Regulations 2016 \(S.I. 2016/674\)](#), regs. 1, 3

Power for the Secretary of State to terminate an arrangement

45. The Secretary of State may terminate an arrangement for the payment of [^{F32}disability living allowance by virtue of entitlement to the mobility component at the higher rate] on behalf of a beneficiary under regulation 44 on such date as he shall decide—

- (a) if requested to do so by the owner of the vehicle to which the arrangement relates, or
- (b) where it appears to him that the arrangement is causing undue hardship to the beneficiary and that it should be terminated before the end of any of the periods specified in regulation 44(3) or 44(4).

Textual Amendments

F32 Words in reg. 45 substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), 23

Restriction on duration of arrangements by the Secretary of State

46. The Secretary of State shall end an arrangement for the payment of [^{F33}disability living allowance by virtue of entitlement to the mobility component at the higher rate] on behalf of a beneficiary made under regulation 44, where he is satisfied that the vehicle to which the arrangement relates has been returned to the owner, and that the expenses of the owner arising out of the hire or hire-purchase agreement have been recovered following the return of the vehicle.

Textual Amendments

F33 Words in reg. 46 substituted (3.2.1992) by [The Social Security \(Claims and Payments\) Amendment Regulations 1991 \(S.I. 1991/2741\)](#), regs. 1(1), 24

Status:

Point in time view as at 10/04/2017.

Changes to legislation:

There are currently no known outstanding effects for the The Social Security (Claims and Payments) Regulations 1987, PART VI.