

1991 No. 2740**SOCIAL SECURITY****The Social Security (Attendance Allowance)
Regulations 1991**

Made - - - - - *5th December 1991*
Laid before Parliament *5th December 1991*
Coming into force *6th April 1992*

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 35(1), (2)(b), (2A), (4A) and (6), 85(1)(b) and 166(2) and (3) of, and Schedule 20 to, the Social Security Act 1975(a) and of all other powers enabling him in that behalf, by this instrument, which contains regulations which relate to matters which, in accordance with section 140 of that Act, have been referred to the Attendance Allowance Board(b), hereby makes the following Regulations:

Citation, commencement and interpretation

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

(2) In these Regulations—

“the Act” means the Social Security Act 1975;



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

▶¹“the NHS Act of 2006” means the National Health Service Act 2006;

“the NHS (Wales) Act of 2006” means the National Health Service (Wales) Act 2006◀



“terminally ill” shall be construed in accordance with section 35(2C) of the Act(d).

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

¹Defns. of “NHS Act of 1977” & “NHS Act of 1990” omitted & defns. of “NHS Act of 2006” & “the NHS (Wales) Act of 2006” inserted in reg. 1(2) by reg. 3(2) of S.I. 2013/389 as from 8.4.13.

(a) 1975 c. 14. Section 35(1) was amended by section 2(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21) (“the 1991 Act”). Subsection (2) was amended by section 2(2) of the Social Security Act 1979 (c. 18) (“the 1979 Act”) and section 10 of and Schedule 4 to the 1979 Act. Subsection (2A) was inserted by section 2(3) and (6) of the 1979 Act. Subsection (4A) was inserted by paragraph 8 of Schedule 1 to the Social Security Act 1980 (c. 30). Schedule 20 is cited for the meaning it ascribes to the words “prescribed” and “regulations”.

(b) See the Social Security Act 1980 (c. 30), section 10 and paragraph 12(3) of Schedule 3.

(c) 1978 c. 29.

(d) Section 35(2C) was inserted by section 1(1) of the Social Security Act 1990 (c. 27).

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¹Reg. 1A inserted by reg 2 of S.I. 1997/2676 as from 1.12.97.

►¹Disapplication of section 1(1A) of the Administration Act

1A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply to any claim for attendance allowance made or treated as made before 9th February 1998.◀

Conditions as to residence and presence in Great Britain

²Words inserted and substituted in reg. 2(1) by reg. 3(3)(a)-(c) of S.I. 2013/389 as from 8.4.13.

2.—(1) Subject to the following provisions of this regulation ►²and regulations 2A and 2B◀, the prescribed conditions for the purposes of section 35(1) of the Act as to residence and presence in Great Britain in relation to any person on any day shall be that—

(a) on that day—

(i) he is ►²habitually◀ resident in ►²the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands◀, and

³Reg 2(1)(a)(ib) substituted for reg. 2(1)(a)(ia) by reg. 10(2) of S.I. 2000/636 as from 3.4.2000.

►³(ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a) or section 115 of that Act does not apply to him for the purposes of entitlement to attendance allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and◀

(ii) he is present in Great Britain, and

(iii) he has been present in Great Britain for a period of, or for periods amounting in the aggregate to, not less than ►²104◀ weeks in the ►²156◀ weeks immediately preceding that day; ►⁴◀

⁴Word in reg. 2(1)(iii) and para. (1)(b) omitted by reg. 7 of S.I. 2006/2378 as from 1.10.06.

See reg. 1(4) & (5) of S.I. 2013/389 at page 3.2773 for details of savings provisions to this reg. in certain situations

(a) on that day—

(i) he is ordinarily resident in Great Britain, and

►²(ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a) or section 115 of that Act does not apply to him for the purposes of entitlement to attendance allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and◀

(ii) he is present in Great Britain, and

(iii) he has been present in Great Britain for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; ►³◀

⁵Reg. 2(1A) omitted by reg. 10(3) of S.I. 2000/636 as from 3.4.2000.

2(1A). ►⁵◀

(a) 1999 c. 33.

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

- (a) he is abroad in his capacity as—
 - (i) a serving member of the forces,
 - (ii) an airman or mariner within the meaning of regulations ►¹111 and 115◄ respectively of the Social Security (Contributions) Regulations ►¹2001◄, and for the purpose of this provision, the expression “serving members of the forces” has the same meaning as in regulation 1(2) of the Regulations of ►¹2001◄; or
- (b) he is in employment prescribed for the purposes of section 132 of the Act in connection with continental shelf operations(a); or
- (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse ►²civil partner,◄ son, daughter, step-son, step-daughter, father, father-in-law, mother, mother-in-law or step-mother of that person; or
- ¹(d) he is temporarily absent from Great Britain and that absence has not lasted for a continuous period exceeding 13 weeks.◄
- (e) ►¹◄

¹Words substituted in 2(2)(a) & para. (d), para. (e) omitted and para. (3A)-(C) & 2A & B inserted by reg. 3(3)(d)-(i) & (4) of S.I. 2013/389 as from 8.4.13.

²Words inserted in reg. 2(2)(c) by para. 19 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

See reg. 1 & 5 of S.I. 2013/389 at page 3.2773 for details of savings provision to this reg. in certain situations.

- (e) his absence from Great Britain is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Great Britain, and the Secretary of State has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Great Britain.

(3) Where a person is terminally ill and makes a claim for attendance allowance expressly on the ground that he is such a person, paragraph (1) shall apply to him as if head (iii) of sub-paragraph (a) was omitted.

►¹(3A) A person shall be treated as habitually resident in Great Britain for the purpose of paragraph (1)(a)(i) where—

- (a) he is resident outside Great Britain in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the Social Security (Contributions) Regulations 2001; or
- (b) he is living with a person mentioned in paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.

(3B) Where a person is temporarily absent from Great Britain, he is treated as present in Great Britain for the purposes of paragraph (1)(a)(ii) and (iii) for the first 26 weeks of that absence, where—

- (a) this absence is solely in connection with arrangements made for the medical treatment of him for a disease or bodily or mental disablement which commenced before he left Great Britain; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
 - (i) outside Great Britain,
 - (ii) during the period whilst he is temporarily absent from Great Britain, and

(a) Section 132 was amended by paragraph 21 of Schedule 3 to the Oil and Gas Enterprise Act 1982 (c. 23). See also regulation 85 of the Social Security (Contributions) regulations 1979/591.

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(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly.

(3C) For the purpose of paragraph (2)(d) and (3B) a person is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.

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

2A.—(1) Regulation 2(1)(a)(iii) shall not apply where on any day—

- (a) the person is habitually resident in Great Britain;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) and regulation 2B, “relevant EU Regulation” has the meaning given by section 84(2) of the Welfare Reform Act 2012.

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

2B. Regulation 2(1)(a)(i) to (iii) shall not apply where on any day—

- (a) the person is habitually resident in—
 - (i) an EEA state other than the United Kingdom; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.◀

(4) ▶¹◀

¹Reg. 2(4) omitted by reg. 7 of S.I. 2006/2378 as from 1.10.06.

Extension of qualifying period

3. The period prescribed for the purposes of section 35(2)(b) of the Act (claimant to satisfy one or both of the conditions in section 35(1) of the Act for 6 months immediately preceding the date from which attendance allowance is to be awarded) shall be 2 years.

4. ▶²◀

²Reg. 4 deleted by reg. 19(b) of S.I. 1997/793 as from 1.9.97.

Renal dialysis

5.—(1) Subject to paragraph (3), a person who suffers from renal failure and who is undergoing the treatment specified in paragraph (2) shall be deemed to satisfy the conditions—

- (a) in section 35(1)(a) of the Act (severe physical and mental disability) if he undergoes renal dialysis by day;
- (b) in section 35(1)(b) of the Act if he undergoes renal dialysis by night;
- (c) in either paragraph (a) or paragraph (b) of section 35(1) of the Act, but not both, if he undergoes renal dialysis by day and by night.

(2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—

- (a) two or more times a week; and
- (b) which either—
 - (i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or

- (ii) which, because of the particular circumstances of his case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the person undergoing renal dialysis or to supervise that person in order that he avoids substantial danger to himself.

(3) Except as provided in paragraph (4), paragraph (1) does not apply to a person undergoing the treatment specified in paragraph (2) where the treatment—

- (a) is provided under ¹the NHS Act of 1978, the NHS Act of 2006 or the NHS (Wales) Act of 2006²;
- (b) is in a hospital or similar institution;
- (c) is out-patient treatment; and
- (d) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.

¹Words in reg. 5(3)(a), 6(1)(a) & (2) substituted by reg. 3(5) & (6) of S.I. 2013/389 as from 8.4.13.

(4) Paragraph (3) does not apply for the purposes of determining whether a person is to be taken to satisfy either of the conditions specified in paragraph (1) during the period of 6 months referred to in section 35(2)(b) of the 1975 Act (qualifying period for attendance allowance).

Hospitalisation

6.—²(1) Subject to regulation 8, it shall be a condition for the receipt of an attendance allowance for any period in respect of any person that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

²Reg. 6(1) substituted by reg. 2(2) of S.I. 1992/2869 as from 15.12.92.

- (a) in a hospital or similar institution under ¹the NHS Act of 1978, the NHS Act of 2006 or the NHS (Wales) Act of 2006²; or
- (b) in a hospital or similar institution maintained or administered by the Defence Council.²

(2) For the purposes of ³paragraph (1)(a)², a person shall only be regarded as not being maintained free of charge in a hospital or similar institution for any period where his accommodation and services are provided under—

³Words in reg. 6(2) substituted by reg. 2 of S.I. 1992/2869 as from 15.12.92.

- ¹(a) section 57 of, and paragraph 14 of Schedule 7A to, the NHS Act of 1978;
- (b) section 13 of, and paragraph 15 of Schedule 2 to, the NHS Act of 2006;
- (c) section 28 of, and paragraph 11 of Schedule 6 to, the NHS Act of 2006;
- (d) section 44(6) of, and paragraph 19(1) of Schedule 4 to, the NHS Act of 2006;
- (e) section 11 of, and paragraph 15 of Schedule 2 to, the NHS (Wales) Act of 2006;
- (f) section 18 of, and paragraph 19(1) of Schedule 3 to, the NHS (Wales) Act of 2006; or
- (g) section 22 of, and paragraph 11 of Schedule 5 to, the NHS (Wales) Act of 2006.²

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¹Reg. 6(2A) inserted by reg. 3 of S.I. 1999/1326 as from 7.6.99.

²Words inserted in reg. 6(2A) by reg. 2(2) of S.I. 2000/1401 as from 19.6.00.

³Reg. 6(3) deleted by reg. 2 of S.I. 1992/2869 as from 15.12.92.

⁴Reg. 7 substituted by reg. 2(1) of S.I. 2007/2875 as from 29.10.07.

⁵Words in reg. 7(2)(a)(ii) substituted by reg. 3(7) of S.I. 2013/389 as from 8.4.13.

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

(3) ►³◄

►⁴Persons in care homes

7.—(1) Subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—


- (a) (i) Part III of the National Assistance Act 1948(a),
- (ii) ►⁵sections 59 and 59A◄ of the Social Work (Scotland) Act 1968(b),
- (iii) the Mental Health (Care and Treatment) (Scotland) Act 2003(c),

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- (a) 1948 c. 29. Part III of the 1948 Act has been amended on numerous occasions not all of which are relevant to these Regulations. The main amendments which are relevant to these Regulations are as follows. Section 21 of the 1948 Act (duty of local authorities to provide accommodation) was amended by the Local Government Act 1972 (c. 70), section 195 and Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), section 20(4) and the Schedule; the Children Act 1989 (c. 41), section 108(5) and Schedule 13, paragraph 11(1); the National Health Service and the Community Care Act 1990 (c. 19), sections 42(1) and 66(1) and Schedule 9, paragraphs 5(1), (2) and (3); the Community Care (Residential Accommodation) Act 1998 (c. 19), section 1 (as substituted by the Health and Social Care Act 2001 (c. 15), section 53); and the National Health Service (Consequential Provisions) Act 2006 (c. 43), section 2 and Schedule 1, paragraphs 5 and 6. Section 22 of the 1948 Act (charges to be made for accommodation) was amended by the Social Security Act 1980 (c. 30), sections 20 and 21 and Schedule 4, paragraph 2 and Schedule 5, Part II; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1); the Social Security Act 1986 (c. 50), Schedule 10, Part II, paragraph 32; and the National Health Service and Community Care Act 1990, sections 44, 66(2) and Schedule 10. Section 26 of the 1948 Act (provision of accommodation in premises maintained by voluntary organisations) was amended by the Health Services and Public Health Act 1968 (c. 46), sections 44 and 78 and Schedule 4; the Local Government Act 1972 (c. 70), section 195, Schedule 23, paragraph 2(3); the Health and Social Services and Social Security Adjudications Act 1983, section 20; the National Health Service and Community Care Act 1990, sections 42 and 66 and Schedules 9 and 10; the Community Care (Residential Accommodation) Act 1992, section 1(1); the Care Standards Act 2000 (c. 14), sections 116 and 117 and Schedule 4, paragraph 1 and Schedule 6; and the National Health Service Reform and Health Care Professionals Act 2002 (c. 17), section 2, Schedule 2, Part 2, paragraph 38. Sections 29 (welfare arrangements for blind, deaf, dumb and crippled persons, etc) and 30 (voluntary organisations for disabled persons' welfare) of the 1948 Act were amended by the Mental Health (Scotland) Act 1960, sections 113(1) and 114 and Schedule 4; the Local Government Act 1972 sections 195, 272(1), Schedule 23, paragraph 2 and Schedule 30; the Employment and Training Act 1973, section 14(1) and Schedule 3, paragraph 3; the Health and Social Services and Social Security Adjudicators Act 1983, section 30 and Schedule 10, Part 1; the Children Act 1989, section 108(5), (6), Schedule 13, paragraph 11(2) and Schedule 14, paragraph 1; and the National Health Service and Community Care Act 1990, sections 42(6) and 44(7). Other amendments which are not relevant to these Regulations have been made to this Act.
- (b) 1968 c. 49. Part IV of the 1968 Act was largely repealed by section 80(1) of, and Schedule 4 to, the Regulation of Care (Scotland) Act 2001 (asp 8). Extant provision has been inserted and amended by the Children Act 1975 (c. 41); the Health and Social Services and Social Security Adjudications Act 1983 (c. 41); the National Health Service and Community Care Act 1990 (c. 19); the Children (Scotland) Act 1995 (c. 36); and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13). Other amendments which are not relevant to these Regulations have been made to this Act.
- (c) 2003 asp 13. The 2003 Act was amended by the Civil Partnership Act 2004 (c. 33) and the Adult Support and Protection (Scotland) Act 2007 (asp 10). It has also been amended by S.S.I. 2004/533, 2005/465.

- (iv) the Community Care and Health (Scotland) Act 2002(a),
- (v) the Mental Health Act 1983(b), or

(b) any other enactment relating to persons under disability.

(3) In this regulation, and in regulation 8, references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person in a private dwelling; or
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
- (c) improvements made to, or furniture or equipment provided for, a care home in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature; or
- (d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds; or
- (e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
- (f) 

¹Reg. 7(3)(f) omitted by reg. 3(7)(b) of S.I. 2013/389 as from 8.4.13.

(4) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (5) and (6), be deemed—

- (a) to begin on the day after the day on which he enters a care home, and
- (b) to end on the day before the day on which he leaves a care home.

(5) Where a person enters a care home from a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.

(6) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home. ◀

(a) 2002 asp 5. The 2002 Act was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13). Other amendments which are not relevant to these Regulations have been made to this Act.

(b) 1983 c. 20. Amendments which are not relevant to these Regulations have been made to this Act.

Exemption from regulations 6 and 7

¹Reg. 8(1) substituted by reg. 5 of S.I. 1992/703 as from 6.4.92.

²Words in reg. 8(1) substituted by reg. 8(2)(a) of S.I. 1992/3147 as from 1.4.93.

8.—¹(1) Regulation 6, or as the case may be, regulation 7, shall not, ²subject to the following provisions of this regulation, apply to a person in respect of the first 28 days of any period during which he—

- (a) is undergoing medical or other treatment in a hospital or other institution in any of the circumstances mentioned in regulation 6; or
- (b) would, but for this regulation, be prevented from receiving an attendance allowance by reason of regulation 7(1).

(2) For the purposes of paragraph (1)—

- (a) two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period;

- (b) any period or periods to which either regulation 6 or regulation 7 refers shall be taken into account and aggregated with any period to which the other of them refers.

(3) Where, on the day a person's entitlement to an attendance allowance commences, he is in accommodation in the circumstances mentioned in regulation 6 or regulation 7, paragraph (1) shall not apply to him for any period of consecutive days, beginning with that day, on which he remains in that accommodation.

►¹(4) Regulation 6 or, as the case may be, regulation 7 shall not apply ►²◄ in the case of a person who is residing in a hospice and is terminally ill where the Secretary of State has been informed that he is terminally ill—

- (a) on a claim for attendance allowance,
- (b) on an application for a ►³revision under section 9 of the Social Security Act 1998 or supersession under section 10 of that Act◄ of an award of attendance allowance, or
- (c) in writing in connection with an award of, or a claim for, or an application for a ►³revision under section 9 of the Social Security Act 1998 or supersession under section 10 of that Act◄ of an award of, attendance allowance.

(5) In paragraph (4) “hospice” means a hospital or other institution ►⁴whose primary functions to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages◄ other than—

- (a) ►⁵◄
- (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978(a)) in Scotland;
- ⁵(ba) a health service hospital (within the meaning of section 275 of the NHS Act of 2006 in England;
- (bb) a hospital in Wales vested in—
- (i) an NHS Trust;
- (ii) a Local Health Board; or
- (iii) the Welsh Ministers, for the purpose of functions under the NHS (Wales) Act of 2006;◄
- (c) a hospital maintained or administered by the Defence Council; or
- (d) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.

►⁶(6) Regulation 7 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—

- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with assistance from another person or a charity, or
- (b) on his behalf by another person or a charity.◄

►⁵(6A) For the purpose of paragraph (5)(bb)—

- (a) “NHS Trust” means a body established under section 18 of the NHS (Wales) Act of 2006; and
- (b) “Local Health Board” means a body established under section 11 of the NHS (Wales) Act of 2006.◄

(7) ►⁷◄

¹Paras. (4) added to reg. 8 by reg. 8(2)(b) of S.I. 1992/3147 as from 1.4.93 (subject to saving in reg. 8(3)–(6) *ibid.*, now revoked).

²Words omitted from reg. 8(4) by reg. 2(4) of S.I. 2000/1401 as from 19.6.00.

³Words substituted in reg. 8(4)(b) and (c) by para. 1 of Sch. 8 to S.I. 1999/2860 as from 18.10.99.

⁴Words inserted in para. (5) of reg. 8 by reg. 2(3)(b) of S.I. 1993/518 as from 1.4.93.

⁵Reg. 8(5)(a) omitted, reg. 8(5)(ba), (bb) & (6A) inserted by reg. 3(8) of S.I. 2013/389 as from 8.4.13.

⁶Para. (6) substituted by reg. 2(3) of S.I. 2007/2875 as from 29.10.07.

⁷Para. (7) omitted from reg. 8 by reg. 2(4)(c) of S.I. 2000/1401 as from 19.6.00.

(a) 1978 c. 29; section 108(1) was amended by paragraph 19(22)(b) of Schedule 9 to the National Health Service and Community Care Act 1990.

Regs. 8A-8E

¹Regs. 8A and 8B inserted by reg. 2(4) of S.I. 1994/1779 as from 1.8.94.

²Date substituted & “26” substituted by “21” in reg. 8A(1) & (3) by reg. 3(9) of S.I. 2013/389 as from 8.4.13.

▶¹Adjustment of allowance where medical expenses are paid from public funds under war pensions instruments

8A.—(1) In this regulation—

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

“article ▶²21◀” means article ▶²21◀ of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order ▶²2006◀ (medical expenses); and

in this regulation and regulation 8B “relevant accommodation” means accommodation provided as a necessary ancillary to nursing care where the medical expenses involved are wholly borne by the Secretary of State pursuant to article 25B or article ▶²21◀.

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

(3) Subject to regulation 8B, where this regulation applies and there are payable in respect of a person both a payment under either article 25B or article ▶²21◀ and an attendance allowance, the allowance shall be adjusted by deducting from it the amount of the payment under article 25B or article ▶²21◀, as the case may be, and only the balance shall be payable.

Exemption from regulation 8A

8B.—(1) Regulation 8A shall not, subject to the following provisions of this regulation, apply to a person in respect of the first 28 days of any period during which the amount of any attendance allowance would be liable to be adjusted by virtue of regulation 8A(3).

(2) For the purposes of paragraph (1) two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the aggregate of such distinct periods and ending on the last day of the later or last such period.

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

- (a) was a day when he was undergoing medical treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 6; or
- (b) was a day when he was, or would but for regulation 8 have been, prevented from receiving an attendance allowance by virtue of regulation 7(1);

and where there is in relation to a person a relevant day, paragraph (1) shall have effect as if for “28 days” there were substituted such lesser number of days as is produced by subtracting from 28 the number of relevant days in his case.◀

³Reg. 8BA inserted by reg. 2 of S.I. 2000/2313 as from 25.9.00.

▶³Prescribed circumstance for entitlement

8BA. For the purposes of section 64(4) of the Social Security Contributions and Benefits Act 1992 (prescribed circumstances in which a person is to be taken to satisfy or not to satisfy the conditions mentioned in section 64(2) and (3) of that Act), a person shall not be taken to satisfy subsection (2)(a) (day attention) or (3)(a) (night attention) unless the attention the severely disabled person requires from another person is required to be given in the physical presence of the severely disabled person.◀

⁴Regs. 8C, 8D and 8E revoked by para. 2 of Sch. 8 to S.I. 1999/2860 as from 18.10.99.

8C.-8E. ▶⁴◀

(a) S.I. 1983/686; article 25B was inserted by article 6 of S.I. 1984/1289 and amended by article 7 of S.I. 1993/480; article 48B was added by article 11 of S.I. 1984/1289.

Revocation

9. The Social Security (Attendance Allowance) (No. 2) Regulations 1975(a) are hereby revoked.

Signed by authority of the Secretary of State for Social Security.

5th December 1991

Nicholas Scott
Minister of State,
Department of Social Security



¹Sch. omitted by reg.
3(c) of S.I. 2001/3767
as from 8.4.02.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace with amendments the Social Security (Attendance Allowance) (No. 2) Regulations 1975 (S.I. 1975/598) and are consequential upon the changes made to attendance allowance by section 2(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 which provides in particular that a person shall not be entitled to an attendance allowance unless he is aged 65 or over.

Regulation 1 contains provisions relating to citation, commencement and interpretation.

Regulation 2 sets out the conditions as to residence and presence in Great Britain which a person must satisfy to qualify for an attendance allowance.

Regulation 3 specifies when the qualifying period provided for in section 35(2)(b) of the Social Security Act 1975 may occur when entitlement to an attendance allowance has been interrupted and regulation 4 enables an attendance allowance to be paid before the date of claim in renewal cases.

Regulation 5 relates specifically to persons undergoing renal dialysis and provides that in certain circumstances such persons shall be entitled to an attendance allowance.

Regulations 6, 7 and 8 impose restrictions on the payment of benefit where a person is accommodated in hospital or is in certain accommodation where the cost is or may be met out of public or local funds.

Regulation 9 revokes the Social Security (Attendance Allowance) (No. 2) Regulations 1975.

(a) S.I. 1975/598.

