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STATUTORY INSTRUMENTS

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**1991 No. 2890**

**The Social Security (Disability  
Living Allowance) Regulations 1991**

**PART II**

**GENERAL**

**Conditions as to residence and presence in Great Britain**

**2.—(1)** Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 37ZA(6) 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 ordinarily resident in Great Britain; 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; and
- (b) where that day falls within a period in which that person—
  - (i) receives tax free emoluments, or
  - (ii) is the spouse of a person who receives tax free emoluments, or
  - (iii) is aged under 16 and is the son, daughter, step-son or step-daughter of a person who receives tax free emoluments,

that period is immediately preceded by a period of 4 years during which the person first mentioned in this sub-paragraph was present in Great Britain for not less than 156 weeks in aggregate.

(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 was 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 81 and 86 respectively of the Social Security (Contributions) Regulations 1979<sup>(1)</sup>,

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 1979; or

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<sup>(1)</sup> S.I. 1979/591; the relevant amending instruments are S.I. 1980/1975, S.I. 1982/1738.

- (b) he is in employment prescribed for the purposes of section 132 of the Act in connection with continental shelf operations<sup>(2)</sup>; or
- (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person; or
- (d) his absence from Great Britain is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or
- (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) In paragraph (1)(b), the expression “tax free emoluments” means emoluments which are exempt from tax under any of the provisions listed in paragraph (1) of regulation 9 of the Child Benefit (General) Regulations 1976<sup>(3)</sup>.

(4) Where a person is terminally ill and—

- (a) makes a claim for disability living allowance; or
- (b) an application is made for a review of his award of disability living 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.

(5) Paragraph (1) shall apply in the case of a child under the age of 6 months as if in head \*(iii) of sub-paragraph (a) for the reference to 26 weeks there was substituted a reference to 13 weeks.

(6) Where in any particular case a child has by virtue of paragraph (5), entitlement to the care component immediately before the day he attains the age of 6 months, then until the child attains the age of 12 months, head (iii) of sub-paragraph (a) of paragraph (1) shall continue to apply in his case as if for the reference to 26 weeks there was substituted a reference to 13 weeks.

### **Age 65 or over**

**3.—**(1) A person shall not be precluded from entitlement to either component of disability living allowance by reason only that he has attained the age of 65 years, where—

- (a) disability living allowance is claimed for a period beginning on or after the day the person attains the age of 65 but before he attains the age of 66;
- (b) on the day before he attained the age of 65 he satisfied the conditions as to residence and presence in Great Britain set out in regulation 2;
- (c) on that day, he satisfied the conditions of entitlement in section 37ZB(1) or as the case may be, section 37ZC(1) of the Act; and
- (d) he has satisfied those conditions throughout the period beginning on that day and ending with the day on which the claim is made.

(2) Paragraph (3) applies to a person who—

- (a) made a claim for disability living allowance before he attained the age of 65, which was not determined before he attained that age, and
- (b) did not at the time he made the claim have an award of disability living allowance for a period ending on or after the day he attained the age of 65.

(2) See regulation 85 of the Social Security (Contributions) Regulations 1979; section 132 was amended by the Oil and Gas Enterprise Act 1982 (c. 23) schedule 3, paragraph 21.

(3) S.I. 1976/965.

(3) In determining the claim of a person to whom this paragraph applies, where the person otherwise satisfies the conditions of entitlement to either or both components of disability living allowance for a period commencing before his 65th birthday (other than the requirements of section 37ZB(2)(a), or, as the case may be, section 37ZC(9)(a) of the Act (3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.

(4) Schedule 1, which makes further provision for persons aged 65 or over shall have effect.

### **Rate of Benefit**

4.—(1) The three weekly rates of the care component are—

- (a) the highest rate, payable in accordance with section 37ZB(4)(a) of the Act, £43.35;
- (b) the middle rate, payable in accordance with section 37ZB(4)(b) of the Act, £28.95; and
- (c) the lowest rate, payable in accordance with section 37ZB(4)(c) of the Act, £11.55.

(2) The two weekly rates of the mobility component are—

- (a) the higher rate, payable in accordance with section 37ZC(11)(a) of the Act, £30.30; and
- (b) the lower rate, payable in accordance with section 37ZC(11)(b) of the Act, £11.55.

### **Late claim by a person previously entitled**

5.—(1) Notwithstanding section 37ZE(1) of the Act (no entitlement to disability living allowance for any day before a claim is made), where—

- (a) a person's entitlement to disability living allowance has ended, and
- (b) that person makes or is treated as making a claim for disability living allowance after the entitlement has ended but within a period of 6 months immediately following the day on which it ended,

then the person shall, subject to satisfying any other conditions of entitlement, be entitled to the care component for any day on or after 6th April 1992 on which he satisfies the conditions specified in paragraph (2)(a) and to the mobility component for any day on or after that day on which he satisfies the conditions specified in paragraph (2)(b).

(2) Those conditions are—

- (a) where the person is entitled on the claim for disability living allowance to the care component, that—
  - (i) the previous entitlement was to the care component,
  - (ii) that entitlement ended within 6 months of the claim being made,
  - (iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day the claim was made, he satisfied the conditions of entitlement to the care component specified in paragraph (a), (b) or (c) of subsection (1) of section 37ZB of the Act; and
  - (iv) the day in question falls within that period,
- (b) where he is entitled on the claim for disability living allowance to the mobility component, that—
  - (i) the previous entitlement was to the mobility component,
  - (ii) that entitlement ended within 6 months of the claim being made,
  - (iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day the claim was made he satisfied

the conditions of entitlement to the mobility component specified in paragraph (a), (b), (c) or (d) of subsection (1) of section 37ZC of the Act, and

(iv) the day in question falls within that period.

(3) Where a person has been entitled for any period before 6th April 1992 to attendance allowance or mobility allowance, then—

- (a) the reference in paragraph (1)(a) to entitlement to disability living allowance includes also a reference to entitlement to attendance allowance or mobility allowance; and
- (b) the reference in paragraph (2)(a)(i) to entitlement to the care component includes also a reference to entitlement to attendance allowance and the reference in paragraph (2)(b)(i) to entitlement to the mobility component includes also a reference to entitlement to mobility allowance.