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## STATUTORY INSTRUMENTS

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# 1992 No. 3147

## The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992

### PART I GENERAL

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 and shall come into force on 1st April 1993.

(2) In these Regulations—

“the Income Support Regulations” means the Income Support (General) Regulations 1987<sup>M1</sup>;

F1  
...

(3) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered Part is to the Part of these Regulations bearing that number;
- (b) to a numbered regulation or Schedule is to the regulation or Schedule to these Regulations bearing that number; and
- (c) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

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#### Textual Amendments

F1 Words in [reg. 1\(2\)](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), [reg. 1\(1\)](#), [Sch. 1](#) (with [regs. 2, 3](#), [Sch. 3](#), [Sch. 4](#))

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#### Marginal Citations

M1 [S.I. 1987/1967](#).

### PART II INCOME SUPPORT

#### Introduction of Residential Allowance

2.—(1) In the Income Support Regulations—

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- (a) in paragraph (1) of regulation 2 (interpretation), there shall be inserted at the appropriate places—
- ““preserved right” means a preserved right for the purpose of regulation 19;
- “residential allowance” means the weekly amount determined in accordance with paragraph 2A of Schedule 2;”;
- (b) in paragraph (1) of regulation 17 (applicable amounts), after sub-paragraph (b), there shall be inserted the following sub-paragraph—
- “(bb) an amount in respect of himself, or where the claimant is a member of a family, an amount in respect of any member of the family aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);”;
- (c) in paragraph (1) of regulation 18<sup>M2</sup> (polygamous marriages), after sub-paragraph (c), there shall be inserted the following sub-paragraph—
- “(cc) an amount, whether in respect of the claimant or any member of his household aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (residential allowance);”;
- (d) in Part I of Schedule 2, after paragraph 2, there shall be inserted the following paragraph—

“**2A.**—(1) The weekly amount for the purposes of regulation 17(1)(bb) and 18(1)(cc) (residential allowance) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be—

- (a) except in a case to which head (b) applies, £45.00; and
- (b) where the home in which the person resides is situated within the area described in Schedule 3C (the Greater London area), £50.00.

(2) Subject to sub-paragraphs (3) and (4), the conditions are—

- (a) the person resides in a residential care home or a nursing home and for this purpose a person shall be regarded as residing in such a home during any period of absence from the home which does not exceed 6 days;
- (b) he does not have a preserved right;
- (c) he is aged 16 or over;
- (d) both the person’s accommodation and such meals (if any) as are provided for him are provided on a commercial basis; and
- (e) no part of the weekly charge for accommodation is met by housing benefit.

(3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides—

- (a) is registered under Part I of the Registered Homes Act 1984 or is deemed to be so registered by virtue of section 2(3) of the Registered Homes (Amendment) Act 1991 (registration of small homes where application for registration not determined);
- (b) is managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament (other than a social services authority) and provides both board and personal care for the claimant; or
- (c) is in Scotland and is registered under section 61 of the Social Work (Scotland) Act 1968 or is an establishment provided by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988 which provides care equivalent to that given in residential accommodation provided under Part IV of the Social Work (Scotland) Act 1968;

and a person resides in a nursing home where the home in which he resides is such a home for the purposes of regulation 19.

(4) A person shall not be regarded as residing in a nursing home for the purposes of sub-paragraph (2) where the home in which he resides is a hospice, and for this purpose “hospice” means a nursing home which—

- (a) if situate in England or Wales, is registered under Part II of the Registered Homes Act 1984, or
- (b) if situate in Scotland, is exempted from the operation of the Nursing Homes Registration (Scotland) Act 1938 by virtue of section 6 of that Act,

and which provides nursing for persons resident therein who suffer from a progressive disease and for whom the purpose of treatment is palliative.

(5) Where—

- (a) a person has been registered under the Registered Homes Act 1984 in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home; and
- (b) an application for registration under that Act has been made by another person and that application has not been determined or abandoned,

then any question arising for determination under this paragraph shall be determined as if the most recent registration under that Act in respect of those premises continued until the day on which the application is determined or abandoned.”

(2) Schedule 1, which contains amendments of the Income Support Regulations consequential upon the introduction of a residential allowance, shall have effect.

(3) Schedule 2, which inserts a new Schedule 3C into the Income Support Regulations, shall also have effect.

#### Marginal Citations

M2 The relevant amending instrument is [S.I. 1988/1228](#).

#### Preserved rights

3.—(1) In regulation 19 of the Income Support Regulations (applicable amounts for persons in residential care and nursing homes)—

- (a) in paragraph (1), for the words preceding the words “his weekly applicable amount”, there shall be substituted the words—

“(1) Subject to regulation 22 (reduction of applicable amounts) where a claimant has a preserved right and either—

- (a) lives in a residential care or nursing home; or
- (b) is a member of a family and he and the members of his family live in such a home;”;

- (b) after paragraph (1ZA)<sup>M3</sup> there shall be inserted the following paragraphs—

“(1ZB) In this regulation a person has a preserved right, subject to paragraphs (1ZE) and (1ZF), where—

- (a) on 31st March 1993, he was living in a residential care home or a nursing home, and—

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- (i) was entitled to income support for the benefit week in which that day fell and his applicable amount was calculated in accordance with Part I of Schedule 4; or
  - (ii) was not in that week entitled to income support because he was able to meet the cost of the accommodation from other sources available to him, but subsequently becomes entitled to income support; or
- (b) he would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—
- (i) except in a case to which head (ii) applies—
    - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
    - (bb) where the person was before his absence a permanent resident in the home, 13 weeks; or
  - (ii) where throughout the period of absence the person was a patient, 52 weeks, and the provisions of sub-paragraph (a) would have applied to him but for that absence.
- (1ZC) Subject to paragraphs (1ZD), (1ZE) and (1ZF), a person also has a preserved right where—
- (a) on 31st March 1993 he was living in a residential care home or nursing home within the meaning of paragraph (3) as then in force, and was entitled to income support but his applicable amount was not calculated in accordance with Part I of Schedule 4 because he was a person to whom paragraph 14 of Schedule 4 applied (accommodation provided by a close relative); and
  - (b) after 31st March 1993, either—
    - (i) he moved from the home in which he was residing on that date to another residential care home or nursing home, or
    - (ii) the ownership of the home changed,
 and in the home to which he moved, or as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a person other than a close relative of his or by any member of his family, and are provided on a commercial basis.
- (1ZD) Where a person has a preserved right under paragraph (1ZC), that right shall commence on the first full day of residence in the residential care home or nursing home to which he moved, or as the case may be, the day after the ownership of the property changed.
- (1ZE) A person does not have a preserved right by virtue of paragraph (1ZB)(a)(ii) or (1ZC) where the residential care home in which he was living provided both board and personal care for less than 4 persons.
- (1ZF) Paragraphs (1ZB) and (1ZC) shall cease to apply to a person who has a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—
- (a) except in a case to which sub-paragraph (b) applies—
    - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or,

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- (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
  - (b) 52 weeks where throughout the period of absence the person was a patient.
  - (a) (1ZG) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right where either—
    - (i) he moves from the home he resided in, or would but for an absence specified in paragraph (1ZB)(b) have resided in, on 31st March 1993 to another residential care home or nursing home, or
    - (ii) the ownership of that home changes;  
and in the home to which he moves or, as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a close relative of his, or by a member of his family, and are provided otherwise than on a commercial basis;
  - (b) a preserved right acquired under paragraph (1ZB) or (1ZC) which ceased to apply to a person in accordance with sub-paragraph (a) shall, notwithstanding that paragraph, revive and again apply in his case where—
    - (i) he moves from the home mentioned in sub-paragraph (a)(i) to another residential care home or nursing home, or
    - (ii) the ownership of that home changes, or in the case of a home mentioned in sub-paragraph (a)(ii), changes again,  
and in the home to which he moves or, as the case may be, following the change or further change of ownership, the accommodation and meals (if any) are provided for him otherwise than by a close relative of his, or by a member of his family, and are provided on a commercial basis.
- (1ZH) For the purposes of paragraphs (1ZB) and (1ZF) a person is a permanent resident in a residential care home or nursing home where the home is his principal place of abode, and a temporary resident where it is not.
- (1ZJ) For the avoidance of doubt, the expression “residential care home” in paragraphs (1ZB) and (1ZE) has the meaning it bore on 31st March 1993.”.

**Marginal Citations**

**M3** Paragraph (1ZA) was inserted by [S.I. 1991/1033](#).

### PART III

#### HOUSING BENEFIT

##### **Amendment of regulation 5 of the Housing Benefit Regulations**

4. ....

##### **Amendment of regulation 7 of the Housing Benefit Regulations**

5. ....

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## Amendment of regulation 8 of the Housing Benefit Regulations

6. ....

### PART IV

#### DISABILITY BENEFITS

7.—(1) In regulation 9 of the Social Security (Disability Living Allowance) Regulations 1991<sup>M4</sup>(“the Disability Living Allowance Regulations”) (persons in certain accommodation other than hospitals), paragraph (3) shall be omitted.

(2) In regulation 10 of those Regulations (which relates to persons in hospital and certain other accommodation)—

- (a) in paragraph (1), for the words “subject to paragraphs (2) and (3)” there shall be substituted the words “ subject to the following provisions of this regulation ”;
- (b) after paragraph (5), there shall be inserted the following paragraphs—

“(6) Regulation 8 or as the case may be regulation 9 shall not apply 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 the care component,
- (b) on an application for a review of an award of disability living allowance, or
- (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, disability living allowance.

(7) In paragraph (6) “hospice” means a hospital or other institution other than—

- (a) a health service hospital (within the meaning of section 128 of the NHS Act of 1977)in England or Wales;
- (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978) in Scotland;
- (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.

(8) Regulation 9 shall not apply in any particular case for any period during which—

- (a) the person for whom the accommodation is provided—
  - (i) is not entitled to income support,
  - (ii) is not entitled to housing benefit, or
  - (iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member, and
- (b) the whole of the cost of that accommodation is met—
  - (i) out of the person’s own resources, or partly out of his own resources and partly with assistance from another person or a charity; or
  - (ii) on his behalf by another person or a charity.”.

(3) Where a person has a preserved right, regulations 9 and 10 of the Disability Living Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (1) and (2) of this regulation had not been made.

(4) For the purposes of paragraph (3) but subject to paragraph (5) a person has a preserved right where—

- (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984<sup>M5</sup> as a residential care home or a nursing home; or
- (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
  - (i) except in a case to which head (ii) applies—
    - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
    - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
  - (ii) where throughout the period of his absence he was receiving free hospital treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>M6</sup>, 52 weeks.

(5) Paragraphs (3) and (4) shall cease to apply to a person who has a preserved right where he is absent from a home such as is mentioned in paragraph (3)(a) and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
  - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
  - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital InPatients) Regulations 1975.

(6) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

#### Marginal Citations

**M4** [S.I. 1992/2890](#); [regulation 9](#) is amended by [S.I. 1992/2869](#).

**M5** [1984 c.23](#).

**M6** See regulation 2(2) of [S.I. 1975/555](#), as amended by [S.I. 1987/1683](#).

#### Amendments relating to attendance allowance

**8.—(1)** In regulation 7 of the Social Security (Attendance Allowance) Regulations 1991<sup>M7</sup> (“the Attendance Allowance Regulations”) (persons in certain accommodation other than hospitals), paragraph (2)<sup>M8</sup> shall be omitted.

(2) In regulation 8 of those Regulations<sup>M9</sup> (which relates to persons in hospitals and in certain other accommodation)—

- (a) in paragraph (1), for the words “subject to paragraph (3)” there shall be substituted the words “subject to the following provisions of this regulation”; and

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- (b) after paragraph (3), there shall be added the following paragraphs—
- “(4) Regulation 6 or, as the case may be, regulation 7 shall not apply 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 review 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 review of an award of, attendance allowance.
- (5) In paragraph (4) “hospice” means a hospital or other institution other than—
- (a) a health service hospital (within the meaning of section 128 of the NHS Act of 1977) in England or Wales;
  - (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978) in Scotland;
  - (c) a hospital maintained or administered by the Defence Council; or
  - (d) an institution similar to a hospital mentioned in any of the preceding subparagraphs of this paragraph.
- (6) Regulation 7 shall not apply in any particular case for any period during which—
- (a) the person for whom the accommodation is provided—
    - (i) is not entitled to income support;
    - (ii) is not entitled to housing benefit; or
    - (iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member; and
  - (b) the whole of the cost of the accommodation is met—
    - (i) out of his own resources, or partly out of his own resources and partly with assistance from another person or a charity;
    - (ii) on his behalf by another person or a charity.”.
- (3) Where a person has a preserved right, regulations 7 and 8 of the Attendance Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (1) and (2) of this regulation had not been made.
- (4) For the purposes of paragraph (3) but subject to paragraph (5) a person has a preserved right where—
- (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984<sup>M10</sup> as a residential care home or a nursing home; or
  - (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
    - (i) except in a case to which head (ii) applies—
      - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
      - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or



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- (ii) where throughout the period of his absence he was receiving free hospital treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>M11</sup>, 52 weeks.
- (5) Paragraphs (3) and (4) shall cease to apply to a person who has a preserved right where he is absent from a home such as is mentioned in paragraph (3)(a) and that absence exceeds a period of—
- (a) except in a case to which sub-paragraph (b) applies—
    - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
    - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
  - (b) 52 weeks where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital InPatients) Regulations 1975<sup>M12</sup>.
- (6) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

**Marginal Citations**

- M7** [S.I. 1991/2740](#); the relevant amending instrument is [S.I. 1992/703](#).
- M8** Paragraph (2) was amended by [S.I. 1992/703](#) and 2869.
- M9** [Regulation 8](#) was amended by [S.I. 1992/703](#) and 2869.
- M10** [1984 c.23](#).
- M11** See regulation 2(2) of [S.I. 1975/555](#), as amended by [S.I. 1987/1683](#).
- M12** See regulation 2(2) of [S.I. 1975/555](#), as amended by [S.I. 1987/1683](#).

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

*Alistair Burt*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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**Changes and effects yet to be applied to :**

- Sch. 1 para. 7(b) revoked by [S.I. 1995/1613 Sch. 4](#)
- reg. 7(3)-(6) revoked by [S.I. 1994/1779 reg. 4\(a\)](#)
- reg. 7(4)(b) words substituted by [S.I. 1993/518 reg. 4\(2\)\(b\)](#)
- reg. 7(5) words substituted by [S.I. 1993/518 reg. 4\(2\)\(c\)](#)
- reg. 8(3)-(6) revoked by [S.I. 1994/1779 reg. 4\(a\)](#)
- reg. 8(4)(b) words substituted by [S.I. 1993/518 reg. 4\(3\)\(b\)](#)
- reg. 8(5) words substituted by [S.I. 1993/518 reg. 4\(3\)\(c\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 7(4)(za) inserted by [S.I. 1993/518 reg. 4\(2\)\(a\)](#)
- reg. 8(4)(za) inserted by [S.I. 1993/518 reg. 4\(3\)\(a\)](#)