
STATUTORY INSTRUMENTS

1992 No. 3147

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

PART II

INCOME SUPPORT

Introduction of Residential Allowance

- 2.—(1) In the Income Support Regulations—
- (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(1) (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⁽²⁾ or is deemed to be so registered by virtue of section 2(3) of the Registered Homes (Amendment) Act 1991⁽³⁾ (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⁽⁴⁾ or is an establishment provided by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988⁽⁵⁾ 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⁽⁶⁾,

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.

(2) 1984 c. 23.

(3) 1991 c. 20.

(4) 1968 c. 49; section 61 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21) section 289c and g and Schedule 7c.

(5) 1988 c. 43.

(6) 1938 c. 73.

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)(7) 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—

(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(8) (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,

(7) Paragraph (1ZA) was inserted by S.I. 1991/1033.

(8) Paragraph 14 was substituted by regulation 31(b) of S.I. 1988/663.

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,
 - (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.”

