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STATUTORY INSTRUMENTS

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**1993 No. 518**

**SOCIAL SECURITY  
HOUSING, ENGLAND AND WALES  
HOUSING, SCOTLAND**

**The Social Security Benefits (Miscellaneous  
Amendments) Regulations 1993**

<i>Made</i>	- - - -	<i>8th March 1993</i>
<i>Laid before Parliament</i>		<i>11th March 1993</i>
<i>Coming into force</i>	- -	<i>1st April 1993</i>

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 67(2), 72(8), 123(1), 130(2) and (4), 135(1), 136(5)(b), 137(1) and (2)(c) and 175(1) to (5) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup>, sections 73(1)(b) and 189(1) and (3) to (6) of the Social Security Administration Act 1992<sup>(2)</sup> and of all other powers enabling him in that behalf, so far as these Regulations relate to housing benefit after consultation with organisations appearing to him to be representative of the authorities concerned<sup>(3)</sup>, and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it<sup>(4)</sup> hereby makes the following Regulations:

**Citation and commencement**

**1.** These Regulations may be cited as the Social Security Benefits (Miscellaneous Amendments) Regulations 1993 and shall come into force on 1st April 1993, immediately following the coming into force of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992<sup>(5)</sup>.

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(1) 1992 c. 4; section 137(1) is an interpretation provision and is cited because of the meaning ascribed to the word "prescribed".  
(2) 1992 c. 5.  
(3) See section 176(1) of the Social Security Administration Act 1992.  
(4) See section 172(1)(b) of the Social Security Administration Act 1992.  
(5) S.I.1992/3147.

**Amendment of the Social Security (Attendance Allowance) Regulations 1991**

2.—(1) The Social Security (Attendance Allowance) Regulations 1991<sup>(6)</sup> shall be further amended in accordance with the following provisions of this regulation.

(2) In regulation 7, (persons in certain accommodation other than hospitals)—

- (a) in sub-paragraph (a)(i) of paragraph (1), the words “or paragraph 2 of Schedule 8 to the NHS Act of 1977” shall be omitted;
- (b) in sub-paragraph (b) of paragraph (3), for the word “accommodation;” there shall be substituted the words “accommodation, and has a preserved right for the purposes of regulation 8(3) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992(7);”;
- (c) in paragraph (4), for the words “This paragraph” there shall be substituted the words “Subject to paragraph (4A), this paragraph”; and
- (d) after paragraph (4), there shall be inserted the following paragraph—

“(4A) Paragraph (4)(b) shall apply in the case of a person who does not have a preserved right for the purposes of regulation 8(3) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992<sup>(8)</sup> as if the words “and at least 4 other persons” to the end of sub-paragraph (b) were omitted.”.

(3) In regulation 8<sup>(9)</sup> (persons exempt from regulations relating to hospitalisation and persons in certain accommodation other than hospitals)—

- (a) in paragraph (4), after the words “shall not apply” there shall be inserted the words “except in a case to which paragraph (7) applies”;
- (b) in paragraph (5), after the words “or other institution” there shall be inserted the words “whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages”;
- (c) in paragraph (6), after the words “shall not apply” there shall be inserted the words “except in a case to which paragraph (7) applies”; and
- (d) after paragraph (6), there shall be added the following paragraph—

“(7) This paragraph applies in the case of a person who is residing in a home owned or managed, or owned and managed, by a local authority.”.

**Amendment of the Social Security (Disability Living Allowance) Regulations 1991**

3.—(1) The Social Security (Disability Living Allowance) Regulations 1991<sup>(10)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 9 (persons in accommodation other than hospitals)—

- (a) in sub-paragraph (a)(i) of paragraph (1), the words “or paragraph 2 of Schedule 8 to the NHS Act of 1977” shall be omitted;
- (b) in sub-paragraph (c) of paragraph (4), for the word “accommodation;”, there shall be substituted the words “accommodation, and has a preserved right for the purposes of regulation 7(3) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992<sup>(11)</sup>”;

<sup>(6)</sup> S.I. 1991/2740; the relevant amending instrument is S.I. 1992/3147.

<sup>(7)</sup> S.I. 1992/3147.

<sup>(8)</sup> S.I. 1992/3147.

<sup>(9)</sup> Paragraphs (4) and (5) were added by S.I. 1992/3147.

<sup>(10)</sup> S.I. 1991/2890; the relevant amending instruments are S.I. 1992/633 and 3147.

<sup>(11)</sup> S.I. 1992/3147.

- (c) in paragraph (5), for the words “This paragraph” there shall be substituted the words “Subject to paragraph 5A, this paragraph”; and
- (d) after paragraph (5), there shall be inserted the following paragraph—
  - “(5A) Paragraph (5)(b) shall apply in the case of a person who does not have a preserved right for the purposes of regulation 7(3) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992 as if the words “and at least 4 other persons” to the end of sub-paragraph(9) were omitted.”.
- (3) In regulation 10(12) (persons exempt from regulations relating to hospitalisation and persons in certain other accommodation other than hospitals)—
  - (a) in paragraph (6), after the words “shall not apply”, there shall be inserted the words “except in a case to which paragraph (9) applies”;
  - (b) in paragraph (7), after the words “or other institution” there shall be inserted the words “whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages”;
  - (c) in paragraph (8), after the words “shall not apply” there shall be inserted the words “except in a case to which paragraph (9) applies”; and
  - (d) after paragraph (8), there shall be added the following paragraph—
    - “(9) This paragraph applies in the case of a person who is residing in a home owned or managed, or owned and managed, by a local authority.”.

#### **Amendment of the Social Security Benefits (Amendments Consequential upon the Introduction of Community Care) Regulations 1992**

4.—(1) The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992(13) shall be amended in accordance with the following provisions of this regulation.

- (2) In regulation 7 (amendments relating to disability living allowance)—
  - (a) in paragraph (4), after sub-paragraph (a) there shall be inserted the following sub-paragraph—
    - “(za) on 31st March 1993, he was—
      - (i) entitled either to—
        - (aa) the care component of disability living allowance, or
        - (bb) income support and his applicable amount was calculated in accordance with regulation 19 of the Income Support (General) Regulations 1987 (persons in residential care and nursing homes)(14); and
      - (ii) living in a home which was not registered under the Registered Homes Act 1984(15) but which on 1st April 1993 was required to be registered under that Act as a residential care home by virtue of the amendments made to it by the Registered Homes (Amendment) Act 1991 (16) (which extends registration to small homes); or”;

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(9) Paragraphs (4) and (5) were added by S.I. 1992/3147.

(12) Regulation 10 is amended by S.I. 1992/633 and 3147.

(13) S.I. 1992/3147.

(14) S.I. 1987/1967; the relevant amending instruments are S.I. 1988/663, 1445, 2022, 1989/1678, 1991/1033 and 1992/3147.

(15) 1984 c. 23.

(16) 1991 c. 20.

- (b) also in paragraph (4), in sub-paragraph (b), for the words “in such a home” there shall be substituted the words “in a home such as is mentioned in either of the preceding sub-paragraphs”;
- (c) in paragraph (5), for the words “paragraph (3)(a)” there shall be substituted the words “paragraph (4)(a) or (za)”.
- (3) In regulation 8 (amendments relating to attendance allowance)—
- (a) in paragraph (4), after sub-paragraph (a) there shall be inserted the following sub-paragraph—
- “**(za)** on 31st March 1993, he was—
- (i) entitled either to—
- (aa) attendance allowance, or
- (bb) income support and his applicable amount was calculated in accordance with regulation 19 of the Income Support (General) Regulations 1987 (persons in residential care and nursing homes); and
- (ii) living in a home which was not registered under the Registered Homes Act 1984 but which on 1st April 1993 was required to be registered under that Act as a residential care home by virtue of the amendments made to it by the Registered Homes (Amendment) Act 1991 (which extends registration to small homes); or”;
- (b) also in paragraph (4), in sub-paragraph (b), for the words “in such a home” there shall be substituted the words “in a home such as is mentioned in either of the preceding sub-paragraphs”;
- (c) in paragraph (5), for the words “paragraph (3)(a)” there shall be substituted the words “paragraph (4)(a) or (za)”.

### **Amendment of the Income Support Regulations**

**5.—(1)** The Income Support (General) Regulations 1987(**17**) shall be further amended in accordance with the following provisions of this regulation.

(2) In regulation 6 (persons not treated as engaged in remunerative work) for paragraph (g)(**18**), there shall be substituted the following paragraph—

- “(g) he is in employment, and—
- (i) lives in, or is temporarily absent from, a residential care home, a nursing home or residential accommodation, and either
- (ii) his, or his partner's, applicable amount falls to be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care and nursing homes) or, as the case may be, paragraph 9, 10 to 10D, 13, 16 or 18 of Schedule 7 (applicable amounts in special cases), or
- (iii) he or his partner satisfies the conditions specified in paragraph 2A(2) of Part I of Schedule 2(**19**) (conditions for entitlement to a residential allowance);”.

(3) In regulation 21 (special cases)—

- (a) after paragraph (3A)(**20**), there shall be inserted the following paragraphs—

**(17)** S.I. 1987/1967.

**(18)** Paragraph (g) was inserted by S.I. 1991/1559.

**(19)** Paragraph 2A was inserted by S.I. 1992/3147.

**(20)** Paragraph (3A) was inserted by S.I. 1991/1656.

“(3B) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided under section 26 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3)(21) shall have effect in relation to that case as if for the words “provided by a local authority in a home owned or managed by that or another authority” there were substituted the words “provided in accordance with arrangements made by a local authority”, and for the words in sub-paragraph (a) “under sections 21 to 24 and 26” there were substituted the words “under section 26”.

(3C) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided by a local authority under section 21 of the National Assistance Act 1948, the definition of “residential accommodation” in paragraph (3) shall have effect in relation to that case as if, after the words “by that or another authority” there were inserted the words “or provided in accordance with arrangements made by a local authority”.”;

(b) after paragraph (4A)(22), there shall be inserted the following paragraph—

“(4B) In the case of a person who on 31st March 1993 was either in or only temporarily absent from, residential accommodation within the meaning of regulation 21(3) as then in force, paragraph (4) shall apply as if sub-paragraph (c)(23) was omitted.”.

(4) In Schedule 2 (applicable amounts), in sub-paragraph (2) of paragraph 2A(24) after head (a), there shall be inserted the following head—

“(aa) the person both requires personal care and is provided with it in the home and for this purpose “personal care” means care which includes assistance with bodily functions where such assistance is required;”.

(5) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) for paragraph 9, there shall be substituted the following paragraph—

“9. Any attendance allowance or the care component of disability living allowance, but, where the claimant’s applicable amount falls to be calculated in accordance with Part I of Schedule 4 only to the extent that it exceeds the amount for the time being specified as the higher rate of attendance allowance for the purposes of section 64(3) of the Social Security Contributions and Benefits Act 1992(25) or, as the case may be, the highest rate of the care component of disability living allowance for the purposes of section 72(4)(a) of that Act.”;

(b) in paragraph 15(26) in sub-paragraph (1) for the words “sub-paragraph (3)”, there shall be substituted the words “sub-paragraphs (3) and (6)”, and after sub-paragraph (5) there shall be added the following sub-paragraph—

“(6) This sub-paragraph shall apply to a claimant in a residential care home or nursing home only if he has a preserved right for the purposes of regulation 19(1ZB) or (1ZC).”;

(c) after paragraph 15, there shall be inserted the following paragraph—

“15A.—(1) Subject to the following provisions of this paragraph, in the case of a claimant placed in a residential care home or nursing home by a local authority under

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(21) The definition of ‘residential accommodation’ was amended by S.I. 1992/3147.

(22) Paragraph (4A) was inserted by S.I. 1992/2155.

(23) Sub-paragraph (c) was inserted by S.I. 1992/3147.

(24) Paragraph 2A was inserted by S.I. 1992/3147.

(25) 1992 c. 4.

(26) Paragraph 15 was amended by S.I. 1990/547.

section 26 of the National Assistance Act 1948<sup>(27)</sup>, any charitable payment or voluntary payment made or due to be made at regular intervals.

(2) This paragraph shall apply only where—

- (a) the claimant was placed in the residential care or nursing home by the local authority because the home was the preferred choice of the claimant, and
- (b) the cost of the accommodation was in excess of what the authority would normally expect to pay having regard to the needs of the claimant assessed in accordance with section 47 of the National Health Service and Community Care Act 1990<sup>(28)</sup>.

(3) This paragraph shall not apply in the case of a person whose applicable amount falls to be calculated under regulation 19 (persons in residential care or nursing homes with preserved rights).

(4) The amount to be disregarded under sub-paragraph (1) shall not exceed the difference between the actual cost of the accommodation provided by the local authority and the cost the authority would normally incur for a person with the particular needs of the claimant.”

### **Amendment of the Housing Benefit (General) Regulations 1987**

6. In regulation 8 of the Housing Benefit (General) Regulations 1987 (eligible housing costs)<sup>(29)</sup>—

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

“(2ZA) In its application to a person who, on 31st March 1993 either occupied as his home, or would for the purposes of regulation 5(8) have been treated as occupying as his home, accommodation provided under sections 21 to 24 or 26 of the National Assistance Act 1948<sup>(30)</sup>, regulation 8(2) shall have effect as if sub-paragraph (b)(i)(aa) were omitted.

(27) Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49), Schedule 9, Part I and applied by section 87(3); the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2, the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b) the National Health Service and Community Care Act 1990, section 42(2) to (5), Schedule 9, paragraph 5(5) and Schedule 10, and the Community Care (Residential Accommodation) Act 1992 (c. 49).

(28) 1990 c. 19.

(29) S.I. 1987/1971; the relevant amending instruments are S.I. 1988/1444 and 1971, 1992/201, 2148 and 3147.

(30) 1948 c. 29; section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 23, paragraphs 1 and 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 44 and Schedule 5; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 5; the Health Service Act 1980 (c. 53), Schedule 1, Part I, paragraph 5; and the National Health Service and Community Care Act 1990 (c. 19), section 42(1), Schedule 9, paragraph 5(1) and (2) and Schedule 10. Section 22 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 87(4) and Schedule 9, Part I; the Supplementary Benefits Act 1976 (c. 71), Schedule 7, paragraph 3; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Social Security Act 1980 (c. 30), section 20, Schedule 4, paragraph 2(1) and Schedule 5, Part II; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(a), and the National Health Service and Community Care Act 1990, section 44, Schedule 10. Section 26 was amended by the National Assistance (Amendment) Act 1959 (c. 30), section 1(1); the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6, paragraph 82; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 45; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; and the National Health Service and Community Care Act 1990, Schedule 9, paragraph 5(4). Section 26 was amended by the Health Services and Public Health Act 1968 (c. 46), section 44 and Schedule 4 and the Social Work (Scotland) Act 1968 (c. 49), Schedule 9, Part I and applied by section 87(3); the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule; the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b); the National Health Service and Community Care Act 1990, section 42(2) to (5), Schedule 9, paragraph 5(5), and Schedule 10 and the Community Care (Residential Accommodation) Act 1992 (c. 49).

(2ZB) Where in any case housing benefit was not payable in respect of 31st March 1993 by virtue of regulation 8(2)(b)(ii) or (iii) as then in force (persons in accommodation provided under the National Health Service Act 1977 or the Social Work (Scotland) Act 1968) regulation 8(2) shall have effect in that case as if—

- (a) sub-paragraph (b)(i)(aa), or in Scotland, sub-paragraph (b)(ii)(aa), and
- (b) the words “and for these purposes “board”” to the end of the paragraph, were omitted.”.

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

8th March 1993

*Ann Widdecombe*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations contain amendments to a number of social security benefit Regulations arising out of the changes to care in the community which are introduced on 1st April 1993.

Regulation 2 amends the Social Security (Attendance Allowance) Regulations 1991. Under the existing Regulations persons in residential care or nursing homes who pay the whole cost of the accommodation themselves may also receive attendance allowance. Regulation 2(2) provides for those residing in such homes before 1st April 1993 to retain that right. Regulation 3(2) makes similar provisions in relation to disability living allowance. Regulations 2 and 3 also provide that attendance allowance and disability living allowance are not payable to persons in residential care homes owned and managed by local authorities (regulations 2(3) and 3(3)).

Regulation 4 specifies circumstances in which persons living in small residential care homes on 31st March 1993 which were not registered under the Registered Homes Act 1984 have preserved rights to attendance allowance or the care component of disability living allowance.

Regulation 5 makes specific provisions in the income support scheme for persons living in or temporarily absent from residential accommodation on 31st March 1993. They also provide that some or all of any charitable or voluntary payments made to enable a person to live in a home of his choice are to be disregarded in determining the income of a resident in a residential care or nursing home (regulation 5(5)).

Regulation 6 relates to housing benefit and makes specific provision for those who on 31st March 1993 either occupied or were temporarily absent from residential accommodation.