

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE) (AMENDMENT)**  
**REGULATIONS**

**2010 No. 1651**

**1.** This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

This instrument amends Regulation 12 of the Social Security (Disability Living Allowance) Regulations 1991 (“DLA Regulations”) in order to set out which categories of severely visually impaired people will be entitled to the higher rate mobility component of Disability Living Allowance (DLA) (currently £49.85 a week), and under what circumstances.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 Severely visually impaired people are not currently entitled to the higher rate mobility component of DLA unless they fulfil one of the existing conditions of entitlement – generally, an inability, or virtual inability to walk by virtue of a physical disability<sup>1</sup>. Instead, severely visually impaired people often gain entitlement to the lower rate mobility component of DLA (currently £18.95 a week) as a result of requiring guidance or supervision when out of doors on unfamiliar routes<sup>2</sup>.

4.2 Section 14<sup>3</sup> of the Welfare Reform Act 2009 (c 24) amended Section 73 of the SSCBA 1991 by adding an additional provision to allow prescribed categories of severely visually impaired people, satisfying prescribed conditions, to be entitled to the higher rate mobility component of DLA.

**5. Territorial Extent and Application**

This instrument applies to Great Britain.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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<sup>1</sup> Section 73(1)(a) of the Social Security Contributions and Benefits Act 1992 (c 4) (“SSCBA 1991”) and DLA Regulation 12(1)(a).

<sup>2</sup> Section 73(1)(d) of the SSCBA 1991 and DLA Regulations 12(7) and (8).

<sup>3</sup> The Hansard transcript of the debate can be found from here (Hansard, Vol 489, Cols 836 to 856) - <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090317/debtext/90317-0013.htm>

## 7. Policy background

- *What is being done and why*

7.1 Disability Living Allowance (DLA) is paid as a contribution towards the disability-related extra costs of severely disabled people. It is made up of two components, either or both of which can be awarded: the care component, payable at one of three rates; and the mobility component, payable at one of two rates.

7.2 Access to the higher rate mobility component of DLA is generally through provisions relating to an inability, or virtual inability (as defined), to walk. There are currently two principal exceptions (often referred to as “deeming provisions”) to this “inability/virtual inability to walk” condition for severely disabled people who are able to walk so long as they:

- are both 100% disabled as a result of blindness (the same definition as being registered blind i.e. “*so blind as to be unable to perform any work for which eyesight is essential*”) and 80% disabled as a result of deafness; or
- have a severe mental impairment (characterised by an arrested or incomplete development of the brain resulting in a severe impairment of intelligence and social functioning) and display severe behavioural problems and are in receipt of the highest rate of the care component of DLA.

7.3 Severely visually impaired people are currently not entitled to the higher rate mobility component of DLA by virtue of their vision difficulties alone, but instead usually gain entitlement to the lower rate mobility component. This has been the case since the introduction of the lower rate mobility component in 1992. The lower rate was introduced to specifically acknowledge the mobility difficulties of those who were physically able to walk but through a sensory, physical or mental disability were unable to negotiate their way out of doors on unfamiliar routes without the guidance or supervision of another person.

7.4 This amendment extends the “deeming provisions” to allow prescribed categories of severely visually impaired people to gain access for the first time to the higher rate mobility component of DLA. The change acknowledges that people with the most severe forms of sight loss, such that they have no useful sight for the purposes of independently getting out and about even in familiar environments, face additional, mobility-related costs. The intention is that this change will allow severely visually impaired people greater freedom to participate in social activities, get out and about and to work where that is an option.

7.5 The two categories of severe visual impairment specified in the Regulations represent a sub-group of those who have been certificated by a consultant ophthalmologist as being severely sight impaired (blind). People who have been certificated as being severely sight impaired, but who do not fall within the ambit of this measure, are excluded on the basis that they will have sufficient vision to enable them to be independently mobile in familiar places. These people will continue to be entitled to the lower rate mobility component where applicable.

7.6 Assessment of entitlement under the new rules will be by reference to clinical data, where it exists, (for example, details on the Certificate of Visual Impairment completed by a consultant ophthalmologist) or through an eye test conducted at a high street optician by an optometrist or orthoptist registered with their professional body and approved by the Secretary of State for Work and Pensions. Eye tests will be arranged and paid for by the Department for Work and Pensions.

7.7 This measure is expected to support an estimated 22,200 severely visually impaired people in its first year (2011/12) at a programme (benefits) cost of £35m.

- *Consolidation*

7.8 As the amendment made by this instrument does not constitute a major re-drafting of the principal regulations, the decision has been taken not to consolidate the relevant legislation on this occasion. This will be kept under review and consideration given again if further amendment is required.

## **8. Consultation outcome**

8.1 The policy basis for the change has been developed in close consultation with the Royal National Institute of Blind People. The draft Regulations were informally consulted on for a period of seven weeks with a range of organisations of and for severely visually impaired people, the representative bodies for the medical/eye-care professions, the Pension Disability and Carers Service Advisory Forum (an advisory body comprising over 20 organisations), the Social Security Advisory Committee and other government departments. The informal nature of the consultation, and its duration, was in recognition that previous consultation had already taken place during the development of the policy and that the consultation was limited to strictly technical detail appropriate to the organisations and individuals invited to comment.

8.2 Eleven substantive responses were received. All the responses were positive with regard to the policy intentions behind the measure and the processes developed to deliver it. Specific comments were received on some of the technical detail which has, where appropriate, been amended. In particular, the Regulations have been modified so that the measure of visual acuity, when combined with a very restricted field of vision (tunnel vision), includes people who have a visual acuity of 3/60 or more on the Snellen scale but less than 6/60. This revision, and the terms used to define it, follows the guidance that accompanies the Certificate of Visual Impairment forms completed by consultant ophthalmologists in England and Wales<sup>4</sup>.

8.3 Following the informal consultation, the Regulations were referred to the Social Security Advisory Committee for its consideration. The Committee considered the Regulations at a meeting on 7 April and decided that it would not request formal referral of the Regulations.

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<sup>4</sup> Copies of the certification forms can be found here - <http://www.rcophth.ac.uk/standards/cvi>

## **9. Guidance**

Training products and guidance are being developed to enable decision makers to assess existing and new cases under the new rules. Guidance will also be made available to optometrists and orthoptists approved by the Secretary of State for Work and Pensions to conduct eye tests once the contracts have been awarded later this year.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 All cases reviewed as part of the exercise to identify and pay existing customers of DLA who come within scope of the measure will be monitored to ensure that cost and caseload estimates are within the anticipated range. For new and existing cases, monitoring arrangements will be put in place, on an ongoing basis, for the purpose of providing analysis based on age, sex, and component/rate breakdowns together with durations. Feedback will also be sought from the Royal National Institute of Blind People and other stakeholders on the processes put in place to identify and process existing claims.

## **13. Contact**

Phil Joseph at the Department for Work and Pensions Tel: 020 7449 5289 or email: [phil.joseph@dw.p.gsi.gov.uk](mailto:phil.joseph@dw.p.gsi.gov.uk) can answer any queries regarding the instrument.