

2013 No. 389

SOCIAL SECURITY

**The Social Security (Disability Living Allowance,
Attendance Allowance and Carer's Allowance)
(Amendment) Regulations 2013**

Made - - - - - *25th February 2013*

Laid before Parliament *4th March 2013*

Coming into force in accordance with regulation 1(2) to (6)

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 73(1)(b) and 189(1) of the Social Security Administration Act 1992(a), and sections 64(1), 67(2), 70(4), 71(6), 72(8), 113(1)(a) and (2), 122(1) and 175(1), (3)(a), (b)(ii) and (iii) and (4) of the Social Security Contributions and Benefits Act 1992(b), makes the following Regulations.

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations 2013.

(2) Except in the case of a person referred to in paragraph (3) in relation to the provisions referred to in paragraphs (4) to (6), these Regulations come into force on 8th April 2013.

(3) Paragraphs (4) to (6) apply in relation to a person who has an existing award on 7th April 2013.

(4) Regulations 2(2)(b), 3(3)(b) and 4(3)(b) come into force—

- (a) on the day immediately following the termination day; or
- (b) on the day on which the first revision or supersession is made on or after the 8th April 2013,

whichever is earlier.

(5) Regulations 2(2)(c), 3(3)(c) and 4(3)(c) come into force—

- (a) on the day immediately following the termination day; or
- (b) 104 weeks after the 8th April 2013,

whichever is earlier;

(a) 1992 c. 5. Section 189(1) was amended by the Social Security Act 1998 (1998 c. 14), section 86(1) and (2), Schedule 7 paragraph 109(a) and Schedule 8; the Social Security Contributions (Transfer of Functions, etc) Act 1999 (1999 c. 2), section 2, Schedule 3, paragraph 57(1) and (2); and the Tax Credits Act 2002 (2002 c. 21), section 60, Schedule 6.
(b) 1992 c. 4. Section 122(1) provides that 'prescribe' means prescribe by regulations.
(c) See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

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- (6) Regulations 3(3)(e) and 4(3)(e) come into force—
- (a) on the day immediately following the termination day; or
 - (b) 26 weeks after the 8th April 2013,

whichever is earlier.

- (7) In this regulation—
- (a) “existing award” means an award of—
 - (i) attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992(a)
 - (ii) carer's allowance under section 70 of that Act(b); or
 - (iii) disability living allowance under section 71 of that Act(c);
 - (b) “termination day” means the day on which the existing award terminates.
- (8) In this regulation and in regulation 5—
- (a) “revision” means a revision under section 9 of the Social Security Act 1998(d);
 - (b) “supersession” means a supersession under section 10 of the Social Security Act 1998(e);
 - (c) “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992.

[Regulation 2 makes various amends to S.I. 1976/409.]

[Regulation 3 makes various amends to S.I. 1991/2740.]

[Regulation 4 makes various amends to S.I. 1991/2890.]

Saving

- 5.—(1) Where paragraph (2) of this regulation applies to a person (‘P’)—
- (a) regulation 2(2)(e) of regulation 2 of the Social Security (Attendance Allowance) Regulations 1991, or
 - (b) regulation 2(2)(e) of regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991,

as the case may be, shall continue to have effect in relation to P as if regulation 3(3)(f) and (h) and regulation 4(3)(f) and (h) respectively, had not been made until the earlier of the events specified in paragraph (3) takes place.

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- (a) Section 64 was amended by the Welfare Reform and Pensions Act 1999 (1999 c. 30), section 66(1); the Pensions Act 2007 (2007 c. 22), section 13(2), Schedule 1, Part 8, paragraph 41; and the Welfare Reform Act 2012 (2012 c. 5), Schedule 9, paragraphs 3, 5(1), (2) and (3), and Schedule 14, Part 9.
 - (b) Section 70 was amended by the Social Security (Severe Disablement Allowance and Invalid Care Allowance) Amendment Regulations 1994 (S.I. 1994/2556), regulation 2(3)(c); the Regulatory Reform (Carer's Allowance) Order 2002 (S.I. 2002/1457), articles 2(1),(2), 3(1), (2), Schedule, paragraphs 1 and 2(c); and the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/2426), regulations 5(1) and (3).
 - (c) Section 71 was amended by the Welfare Reform and Pensions Act 1999, section 67(1).
 - (d) 1998 c. 14. There is an amendment to section 9 not relevant to these Regulations.
 - (e) Section 10 was amended by the Social Security (Transfer of Functions, etc) Act 1999 (c. 2), Schedule 7, paragraph 23(a) and (b) and Schedule 10, Part 1; the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), article 9(1) and Schedule 3, paragraphs 143 and 148; and the Welfare Reform Act 2012, Schedule 12, paragraph 4. There are other amendments to section 10 not relevant to these Regulations.

- (2) This paragraph applies to P—
- (a) who on 8th April 2013 is absent from Great Britain;
 - (b) whose absence is temporary and for the specific purpose of being treated for incapacity, or a disabling condition, which commenced before they left Great Britain; and
 - (c) in respect of whom, before 8th April 2013 the Secretary of State had certified that it was consistent with the proper administration of the Contributions and Benefits Act that, subject to the satisfaction of the condition in paragraph (2)(b), P should be treated as though P were present in Great Britain.
- (3) The events specified for the purpose of paragraph (1) are either that—
- (a) P returns to Great Britain; or
 - (b) the first revision or supersession after 8th April 2013 is made in respect of P's award.

Signed by authority of the Secretary of State for Work and Pensions

25th February 2013

Esther McVey
Parliamentary Under Secretary of State,
Department for Work and Pensions

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend three sets of regulations affecting the benefits known as Carer's Allowance ("CA"), Attendance Allowance ("AA") and Disability Living Allowance ("DLA") (the "disability benefits").

The sets of regulations that are amended are the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409) (the "CA regulations"), Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740) (the "AA regulations") and Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) (the "DLA regulations"). They:-

- change the residence and presence conditions for the disability benefits so that they align with the conditions that are being introduced for Personal Independence Payment - the benefit under Part 4 of the Welfare Reform Act 2012 that will replace DLA for people of working age. Under the revised conditions:-
 - the test of ordinary residence is changed to habitual residence;
 - the past presence test is altered so that a period of presence in Great Britain of 104 out of the past 156 weeks is required before entitlement can be established to any of the disability benefits;
 - for DLA and AA, the temporary absence rule is reduced to 13 weeks and the rule for temporary absence for medical reasons is reduced to a maximum of 26 weeks;
 - for DLA and AA, serving members of the armed forces are treated as being habitually resident in Great Britain when they are serving and stationed abroad; and
 - as a result of a judgment in the European Court of Justice in July 2011 in the case of *Lucy Stewart v Secretary of State for Work and Pensions* a reference has been added to the "genuine and sufficient link" for those arriving in Great Britain from another EEA state or Switzerland or moving abroad to one of those states;
- revoke regulation 9(6)(f) of the DLA regulations and regulation 7(3)(f) of the AA regulations, which provided that services provided to a resident of a care home pursuant to the National Health Service Act 2006, the National Health Service (Wales) Act 2006 or the National Health Service (Scotland) Act 1978 did not count as qualifying services. 'Qualifying services' are defined in section 72(8) of the Social Security Contributions and Benefits Act 1992 as accommodation, board and personal care;
- amend regulation 12B(7) of the DLA regulations, which provided that hospital in-patients with live Motability agreements were not subject to the hospitalisation rule (which stopped payment of the mobility component after 28 days in hospital - 84 days for a child under 16). The amendment provides that regulation 12B(7) is amended so that it no longer applies to any person who enters hospital after 8th April 2013. People with live Motability contracts who are hospital in-patients on or before 8th April 2013 will continue to be paid mobility component until their live Motability contract expires. The amendment also provides that after 8th April 2016 no person with a live Motability contract will be paid mobility component;
- update references in the DLA regulations and AA regulations to reflect the equivalent references in current legislation;
- provide that with effect from 6th December 2018, references in the DLA regulations to the upper age limit for claiming DLA (65 years old) will be read as references to "pensionable age" to reflect the equalisation of pensionable

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ages for men and women. "Pensionable age" in relation to this amendment has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

