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STATUTORY INSTRUMENTS

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**1991 No. 2887**

**The Disability Working Allowance (General) Regulations 1991**

**PART IV**

**MEMBERSHIP OF A FAMILY**

**Persons of a prescribed description**

**8.—**(1) Subject to paragraph (2), a person of a prescribed description for the purposes of section 20(11) of the Act (meaning of the family) as it applies to disability working allowance is a person aged 16 or over but under 19 who is receiving full-time education within section 2(1)(b) of the Child Benefit Act 1975(1) (meaning of child), and in these Regulations such a person is referred to as “a young person”.

(2) Paragraph (1) shall not apply to a person—

- (a) who is entitled to income support or would, but for section 20(9) of the Act (provision against dual entitlement of members of family), be so entitled;
- (b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations 1976(2) ; or
- (c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of the Child Benefit (General) Regulations 1976.

**Circumstances in which a person is to be treated as responsible or not responsible for another**

**9.—**(1) Subject to the following provisions of this regulation, a person shall be treated as responsible for a child or young person who is normally living with him.

(2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person shall be treated for the purposes of paragraph (1) as normally living with—

- (a) the person who is receiving child benefit in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has the primary responsibility for him.

(3) For the purposes of these Regulations a child or young person shall be treated as the responsibility of only one person during the period of an award and any person other than the one treated as responsible for the child or young person under the foregoing paragraphs shall be treated as not so responsible.

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(1) 1975 c. 61, as amended by sections 4, 8 and 21 of, and Schedule 5 Part I to, the Social Security Act 1980 (c. 30) and by section 70 of the Social Security Act 1986 (c. 50).  
(2) S.I. 1976/965; relevant amending instruments are S.I. 1980/1045, 1982/470 and 1987/357.

**Membership of the same household**

**10.**—(1) Except in a case to which paragraph (2) applies, where a claimant or any partner is treated as responsible for a child or young person by virtue of regulation 9 (circumstances where a person is treated as responsible or not responsible for another), that child or young person and any child of that child or young person shall be treated as a member of the claimant’s household.

(2) A child or young person shall not be treated as a member of the claimant’s household in any case where the child or young person—

- (a) is a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 12 weeks immediately before the date of claim and is no longer in regular contact with the claimant or any member of the claimant’s household; or
- (b) is in a foster placement, or in Scotland boarded out, with the claimant or his partner prior to adoption; or
- (c) is in a foster placement, or in Scotland boarded out, with the claimant or his partner under a relevant enactment; or
- (d) has been placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983(3) or the Adoption Agencies (Scotland) Regulations 1984(4) ; or
- (e) is detained in custody under a sentence imposed by a court.

(3) In this regulation—

- (a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or in Scotland, young offender’s institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(5) ;
- (b) “relevant enactment” means the Army Act 1955(6) , the Air Force Act 1955(7) , the Naval Discipline Act 1957(8) , the Matrimonial Proceedings (Children) Act 1958(9) , the Social Work (Scotland) Act 1968(10) , the Family Law Reform Act 1969(11) , the Children and Young Persons Act 1969(12) , the Matrimonial Causes Act 1973(13) , the Guardianship Act 1973(14) , the Children Act 1975(15) , the Adoption Act 1976(16) , the Domestic Proceedings and Magistrates' Courts Act 1978(17) , the Adoption (Scotland) Act 1978(18) , the Child Care Act 1980(19) and the Children Act 1989(20) ;
- (c) “residential accommodation” means accommodation for a person whose stay in the accommodation has become other than temporary which is provided under—

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(3) S.I. 1983/1964.

(4) S.I. 1984/988.

(5) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.

(6) 1955 c. 18.

(7) 1955 c. 19.

(8) 1957 c. 53.

(9) 1958 c. 40.

(10) 1968 c. 49.

(11) 1969 c. 46.

(12) 1969 c. 54.

(13) 1973 c. 18.

(14) 1973 c. 29.

(15) 1975 c. 72.

(16) 1976 c. 36.

(17) 1978 c. 22.

(18) 1978 c. 28.

(19) 1980 c. 5.

(20) 1989 c. 41.

- (i) sections 21 to 24 and 26 of the National Assistance Act 1948(21) (provision of accommodation); or
- (ii) section 21(1) of, and paragraph 1 or 2 of Schedule 8 to, the National Health Service Act 1977(22) (prevention, care and after-care) or, in Scotland, for the purposes of section 27 of the National Health Services (Scotland) Act 1947(23) (prevention of illness and after-care) or under section 59 of the Social Work (Scotland) Act 1968(24) (provision of residential and other establishments) or under section 7 of the Mental Health (Scotland) Act 1984(25) (function of local authorities).

### **Circumstances in which a person is to be treated as being no longer a member of the same household**

11.—(1) Where one member of a married or unmarried couple has taken up residence in accommodation provided under sections 21 to 24 and 26 of the National Assistance Act 1948 (provision of accommodation) he shall be treated as no longer being a member of the same household as his partner unless the stay in that accommodation is temporary.

(2) Where one of the members of a married or unmarried couple is a hospital patient or detained in custody he shall not be treated, on this account, as ceasing to be a member of the same household as his partner—

- (a) unless he has been a patient in a hospital for 52 weeks or more; or
- (b) unless he is a patient detained in a hospital provided under section 4 of the National Health Service Act 1977(26) (special hospitals) or section 90(1) of the Mental Health (Scotland) Act 1984 (provision of hospitals for patients requiring special security); or
- (c) unless he is detained in custody whilst serving a sentence of 52 weeks or more imposed by a court, his partner wherever the conditions in sub-paragraphs (a), (b) or (c) are fulfilled.

(3) In this regulation “patient” has the same meaning as in regulation 10(3)(a) (membership of the same household).

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(21) 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. 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 Social Security Act 1986 (c. 50), section 86, Schedule 10, paragraph 32. Section 24 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 (c. 19), section 66(1), 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) of that Act; the Local Government Act 1972 (c. 70), Schedule 23, paragraph 2; the Housing (Homeless Persons) Act 1977 (c. 48), Schedule and the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 20(1)(b).

(22) 1977 c. 49; paragraph 1(1) was amended by the Education Reform Act 1988 (c. 40), section 237, Schedule 12, paragraph 22; paragraphs 1(2) and 2(5) of Schedule 8 were repealed by section 30 of, and Schedule 10, Part I to, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) and paragraphs 2(1) to (3) were amended by the Mental Health Act 1983 (c. 20), section 148 and Schedule 4.

(23) 1947 c. 27, as applied by section 1(4)(c) of the Social Work (Scotland) Act 1968 (c. 49); section 27 is continued in force for the purposes of section 1(4)(c) by paragraph 15 of Schedule 15 to the National Health Service (Scotland) Act 1978 (c. 29).

(24) 1968 c. 49.

(25) 1984 c. 36.

(26) 1977 c. 49; section 4 was amended by the Mental Health Act 1983 (c. 20), section 148, Schedule 4, paragraph 47.