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STATUTORY INSTRUMENTS

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**2005 No. 2687**

**SOCIAL SECURITY**

**The Social Security (Care Homes and  
Independent Hospitals) Regulations 2005**

*Made* - - - - *24th September 2005*  
*Laid before Parliament* *30th September 2005*  
*Coming into force* - - *24th October 2005*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 67(2)(a) and (b), 72(8)(a) and (b), 123(1)(a), (d) and (e), 130(2) and (4), 135(1) and (2), 136(2), (3), (4) and (5), 136A(2), (3) and (4)<sup>M1</sup>, 137(1), 137(2)(h) and (i), 138(1)(a), (2) and (4), and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992<sup>M2</sup>, sections 1(1C)<sup>M3</sup>, 5(1)(p), 5(6)<sup>M4</sup> and 189(4) and (5) of the Social Security Administration Act 1992<sup>M5</sup>, sections 4(5) and (12), 12(1), (2) and (4)(a), 20(4), 20B(4)<sup>M6</sup>, 35(1) and 36(1) and (2) of and paragraphs 1(2)(b), 8, 8A<sup>M7</sup>, 10(1) and (2) and 12 of Schedule 1 to the Jobseekers Act 1995<sup>M8</sup>, section 122(5) of the Housing Act 1996<sup>M9</sup>, sections 62(4)(c), 63(4)(c) and 65(1) of the Child Support, Pensions and Social Security Act 2000<sup>M10</sup>, sections 7(4)(c), 8(4)(c) and 11(1) of the Social Security Fraud Act 2001<sup>M11</sup>, sections 2(3)(b), 6(1), 15(2) and (6)(b) and 17(2)(a) of the State Pension Credit Act 2002<sup>M12</sup> and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it<sup>M13</sup>, makes the following Regulations:

**Marginal Citations**

- M1** Section 136A was inserted for the purpose only of exercising power to make regulations by paragraph 3 of Schedule 2 of the [State Pension Credit Act 2002](#) (c. 16).
- M2** 1992 c. 4.
- M3** Section 1C was inserted by section 19 of the [Social Security Administration \(Fraud\) Act 1997](#) (c. 47).
- M4** Section 5(6) was inserted by section 120 of the [Housing Act 1996](#) (c. 52).
- M5** 1992 c. 5.
- M6** Section 20B was inserted by section 59 of the [Welfare Reform and Pensions Act 1999](#) (c. 30).
- M7** Paragraph 8A was inserted by section 59 of the [Welfare Reform and Pensions Act 1999](#).
- M8** 1995 c. 18.
- M9** 1996. c52.
- M10** 2000 c. 19.
- M11** 2001 c. 11.

*Changes to legislation: There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)*

**M12** 2002 c. 16.

**M13** See sections 170 and 173(1)(b) of the [Social Security Administration Act 1992 \(c. 5\)](#).

**Citation and commencement**

1. These Regulations shall be cited as the Social Security (Care Homes and Independent Hospitals) Regulations 2005 and shall come into force on 24th October 2005.

**Amendment of the Income Support (General) Regulations 1987**

2. The Income Support (General) Regulations 1987 <sup>M14</sup> shall be amended in accordance with Schedule 1 to these Regulations.

**Marginal Citations**

**M14** [S.I. 1987/1967](#).

**Amendment of the Jobseeker's Allowance Regulations 1996**

3. The Jobseeker's Allowance Regulations 1996 <sup>M15</sup> shall be amended in accordance with Schedule 2 to these Regulations.

**Marginal Citations**

**M15** [S.I. 1996/207](#).

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

<sup>F1</sup>4. ....

**F1** [Reg. 5](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**Amendment of the Council Tax Benefit (General) Regulations 1992**

<sup>F1</sup>5. ....

**F1** [Reg. 5](#) revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**Amendment of the State Pension Credit Regulations 2002**

6. The State Pension Credit Regulations 2002 <sup>M16</sup> shall be amended in accordance with Schedule 5 to these Regulations.

**Marginal Citations**

**M16** [S.I. 2002/1792](#).

## **Revocation of the Income Support and Jobseeker's Allowance (Amounts for Persons in Residential Care and Nursing Homes) Regulations 2001**

7. The Income Support and Jobseeker's Allowance (Amounts for Persons in Residential Care and Nursing Homes) Regulations 2001 <sup>M17</sup> are hereby revoked.

### **Marginal Citations**

**M17** [S.I. 2001/1785](#).

## **Amendment of the Social Fund Winter Fuel Payment Regulations 2000**

8.—(1) The Social Fund Winter Fuel Payment Regulations 2000 <sup>M18</sup> shall be amended in accordance with this regulation.

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (2)—

(i) omit the definitions of “nursing home” and “residential accommodation”;

(ii) at the appropriate places insert the following definitions— “care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000 <sup>M19</sup>, and in Scotland means a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 <sup>M20</sup>; ”

““independent hospital” has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;”;

(b) in paragraph (3) <sup>M21</sup>—

(i) omit “Subject to paragraph (3A),”;

(ii) in sub-paragraph (a) for heads (i) to (iii) substitute—

“(i) a care home;

(ii) an independent hospital; or”;

(c) omit paragraph (3A).

### **Marginal Citations**

**M18** [S.I. 2000/729](#). Relevant amending instruments are [S.I. 2000/2864](#), 2001/3375, 2003/1121 and 2004/2154.

**M19** [2000 c. 14](#).

**M20** 2001asp.8.

**M21** Paragraph (3) was substituted by [S.I. 2001/3375](#).

## **Amendment of the Social Fund Cold Weather Payments (General) Regulations 1988**

9.—(1) The Social Fund Cold Weather Payments (General) Regulations 1988 <sup>M22</sup> shall be amended in accordance with this regulation.

(2) In regulation 1A (prescribed descriptions of persons) <sup>M23</sup>—

(a) in paragraph (1)—

(i) for “paragraph (3)” substitute “ paragraph (2) ”;

- (ii) in sub-paragraph (ib) omit “and is not resident in a care home”;
- (b) for paragraphs (2) and (3) substitute—
  - “(2) Paragraph (1)(i), (ia) and (ib) shall not apply to a person who resides in—
    - (a) a care home;
    - (b) an independent hospital;
    - (c) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or
    - (d) accommodation provided under section 3(1) of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947 <sup>M24</sup> (provision by the Secretary of State of accommodation in camps).
  - (3) In paragraph (2)—
    - (a) “care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, and in Scotland means a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001;
    - (b) “independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001.”.

**Marginal Citations**

**M22** [S.I. 1988/1724](#).

**M23** [Regulation 1A](#) was inserted by [S.I. 1991/2448](#); relevant amending instruments are [S.I. 1996/2544](#), [2002/3019](#) and [2003/1121](#).

**M24** [1947 c. 19](#).

**Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987**

**F2**10. ....

**F2** [Reg. 10](#) revoked (5.12.2005) by [The Social Fund Maternity and Funeral Expenses \(General\) Regulations 2005 \(S.I. 2005/3061\)](#), [reg. 1](#), [Sch.](#)

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

**11.**—(1) The Social Security (Disability Living Allowance) Regulations 1991 <sup>M25</sup> shall be amended in accordance with this regulation.

- (2) In regulation 9 (persons in certain accommodation other than hospitals) <sup>M26</sup>—
  - (a) in paragraph (6)(c) for “residential homes” substitute “ independent hospitals or care homes ”;
  - (b) after paragraph (6) add the following paragraph—
    - “(7) In paragraph (6)—
      - “care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001.”

**Marginal Citations**

**M25** [S.I. 1991/2890](#).

**M26** Relevant amending instrument is [S.I. 2002/208](#).

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

**12.**—(1) The Social Security (Attendance Allowance) Regulations 1991 <sup>M27</sup> shall be amended in accordance with this regulation.

(2) In regulation 7 (persons in certain accommodation other than hospitals) <sup>M28</sup>—

(a) in paragraph (5)(c) for “residential homes” substitute “ independent hospitals or care homes ”;

(b) after paragraph (5) insert the following paragraph—

“(6) In paragraph (5)—

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001.”

**Marginal Citations**

**M27** [S.I. 1991/2740](#).

**M28** Relevant amending instrument is [S.I. 2002/208](#).

**Amendment of the Social Security (Claims and Payments) Regulations 1987**

**13.**—(1) The Social Security (Claims and Payments) Regulations 1987 <sup>M29</sup> shall be amended in accordance with this regulation.

(2) Omit regulation 35A (transitional provisions for persons in hostels or certain residential accommodation) <sup>M30</sup>.

(3) In Schedule 9 (deductions from benefit and direct payment to third parties)—

(a) in sub-paragraph (1) of paragraph 1 (interpretation), for the definition of “hostel”<sup>M31</sup> substitute—

““hostel” means a building—

(a) in which there is provided for persons generally, or for a class of persons, accommodation, otherwise than in separate and self-contained premises, and either board or facilities of a kind set out in paragraph 4A(1)(d) below adequate to the needs of those persons and—

(b) which is—

- (i) managed by or owned by a housing association registered with the Housing Corporation established by the Housing Act 1964<sup>M32</sup>;
  - (ii) managed or owned by a housing association registered with Scottish Homes established by the Housing (Scotland) Act 1988<sup>M33</sup>;
  - (iii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or a local authority; or
  - (iv) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community, and
- (c) which is not—
- (i) a care home;
  - (ii) an independent hospital; or
  - (iii) an establishment run by the Abbeyfield Society including all bodies corporate or incorporated which are affiliated to that Society, and
- (d) in sub-paragraph (b)(iv) above, “voluntary organisation” shall mean a body the activities of which are carried out otherwise than for profit, but shall not include any public or local authority;”;
- (b) in paragraph 4 (miscellaneous accommodation costs)<sup>M34</sup>—
- (i) in sub-paragraph (1)—
    - (aa) in head (a), for “in a residential care home or nursing home” substitute “residing in a care home, an Abbeyfield Home or an independent hospital”;
    - (bb) omit head (b)(i) and (iii);
  - (ii) in head (a) of sub-paragraph (2) omit—
    - “(i) as specified in sub-paragraph (1)(b)(i) or (iii); or
    - (ii) ”.

#### Marginal Citations

**M29** S.I. 1987/1968.

**M30** Regulation 35A was inserted by S.I. 1989/1686.

**M31** The definition of “hostel” was inserted by S.I. 1991/2284 and amended by S.I. 2002/398.

**M32** 1964 c. 56.

**M33** 1988 c53.

**M34** Relevant amending instruments are S.I. 1989/136, 1992/3147, 1996/1460, 1999/3178, 2002/398 and 2003/2325.

### Amendment of the Social Security (Breach of Community Order) Regulations 2001

14.—(1) The Social Security (Breach of Community Order) Regulations 2001<sup>M35</sup> shall be amended in accordance with this regulation.

(2) In paragraph (4) of regulation 6 (meaning of “person in hardship”), for “residential care home or nursing home” substitute “care home, an Abbeyfield Home or an independent hospital”.

(3) In paragraph (4) of regulation 12 (meaning of “couple in hardship”) for “residential care or nursing home” substitute “care home, an Abbeyfield Home or an independent hospital”.

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**Marginal Citations**

**M35** [S.I. 2001/1395](#).

**Amendment of the Social Security (Loss of Benefit) Regulations 2001**

**15.**—(1) The Social Security (Loss of Benefit) Regulations 2001 <sup>M36</sup> shall be amended in accordance with this regulation.

(2) In paragraph (4) of regulation 5 (meaning of “person in hardship”) for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”.

(3) In paragraph (5) of regulation 11 (application of Part and meaning of “couple in hardship”) for “residential care or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”.

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**Marginal Citations**

**M36** [S.I. 2001/4022](#).

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

24th September 2005

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

## SCHEDULE 1

Regulation 2

## AMENDMENT OF THE INCOME SUPPORT (GENERAL) REGULATIONS 1987

## 1. In regulation 2 (interpretation)—

## (a) in paragraph (1)—

(i) omit the definitions of “nursing home”, “residential accommodation”<sup>M37</sup> and “residential care home”<sup>M38</sup>;

## (ii) at the appropriate places insert the following definitions—

““Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;”;

(b) in paragraph (1A)<sup>M39</sup> from “residential care home” to “reside in that home” substitute “care home, an Abbeyfield Home or an independent hospital and he is temporarily absent from that home or hospital, he shall be regarded as continuing to reside in that home or hospital”.

**Marginal Citations**

**M37** The definition of “residential accommodation” was substituted by [S.I. 1988/1445](#) and amended by [S.I. 1989/534](#) and [2001/3767](#).

**M38** The definitions of “nursing home” and “residential care home” were substituted by [S.I. 2001/3767](#); relevant amending instrument is [S.I. 2005/2078](#).

**M39** Paragraph (1A) was inserted by [S.I. 2001/3767](#) and amended by [S.I. 2003/1195](#).

2. For paragraph (4)(d) of regulation 6 (persons not treated as engaged in remunerative work)<sup>M40</sup> substitute—

“(d) a person who—

(i) is in employment;

(ii) lives in, or is temporarily absent from, a care home, an Abbeyfield Home or an independent hospital; and

(iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.”.

**Marginal Citations**

**M40** Paragraph (4) was inserted by [S.I. 2000/681](#) and sub-paragraph (d) was substituted by [S.I. 2001/3767](#).



3. In regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household)—

(a) in paragraph (3)(e) for “in residential accommodation or a residential care home or a residential nursing home” substitute “residing in a care home, an Abbeyfield Home or an independent hospital”;

(b) in paragraph (5)(b)<sup>M41</sup> omit “provided under any of the provisions referred to in any of sub-paragraphs (a) to (d) (excluding heads (i) and (ii) of sub-paragraph (d)) of the definition of residential accommodation in regulation 21(3)”;

(c) in paragraph (8) before sub-paragraph (a) insert—

“(za) “accommodation” means accommodation provided by a local authority in a home owned or managed by that local authority—

(i) under sections 21 to 24 of the National Assistance Act 1948<sup>M42</sup> (provision of accommodation),

(ii) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968<sup>M43</sup> (provision of residential or other establishment), or

(iii) under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>M44</sup> (care and support services etc.),

where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;”.

**Marginal Citations**

**M41** Relevant amending instruments are [S.I. 1988/663](#), 1989/534 and 1996/206.

**M42** 1948 c. 29.

**M43** 1968 c. 49.

**M44** 2003 asp.13.

4. For paragraph (4)(a)(iii)<sup>M45</sup> of regulation 17 (applicable amounts) substitute—

“(iii) in a care home, an Abbeyfield Home or an independent hospital; or”.

**Marginal Citations**

**M45** Relevant amending instrument is [S.I. 2001/3767](#).

5. In regulation 21 (special cases)—

(a) in paragraph (3) omit the definition of “residential accommodation”<sup>M46</sup>;

(b) omit paragraphs (3A) to (3E)<sup>M47</sup> and (4)<sup>M48</sup> to (4B)<sup>M49</sup>.

**Marginal Citations**

**M46** The definition of “residential accommodation” was substituted by [S.I. 1992/3147](#); relevant amending instruments are [S.I. 1994/2139](#), 1995/516 and 2005/2078.

**M47** Paragraph (3A) was inserted by [S.I. 1991/1656](#) and amended by [S.I. 1996/2614](#) and 2001/3767. Paragraph (3B) was inserted by [S.I. 1993/518](#) and amended by [S.I. 1995/516](#). Paragraph (3C) was inserted by [S.I. 1993/518](#) and amended by [S.I. 1993/2119](#). Paragraph (3D) was inserted by [S.I. 1994/2139](#). Paragraph (3E) was inserted by [S.I. 1994/2139](#) and amended by [S.I. 2005/2078](#).

**M48** Paragraph (4) was amended by [S.I. 1992/3147](#) and 1995/516.

*Changes to legislation: There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)*

**M49** Paragraph (4A) was inserted by [S.I. 1992/2155](#) and amended by [S.I. 1992/3147](#). Paragraph (4B) was inserted by [S.I. 1993/518](#).

6. In paragraph (4A) of regulation 42 (notional income) <sup>M50</sup> for “lives in a residential care home or a nursing home, or is temporarily absent from such a home” substitute “ resides in a care home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital ”.

#### Marginal Citations

**M50** Paragraph (4A) was inserted by [S.I. 1994/527](#) and amended by [S.I. 2003/455](#).

7. In regulation 53 (calculation of tariff income from capital)—

- (a) in paragraph (1B) <sup>M51</sup>—
  - (i) for sub-paragraphs (a) and (b) substitute—
    - “(a) a care home or an independent hospital;
    - (b) an Abbeyfield Home;”;
  - (ii) omit sub-paragraph (d);
- (b) in paragraph (1C) <sup>M52</sup>—
  - (i) after “home” in both places insert “ , hospital ”;
  - (ii) in sub-paragraph (a) for “, (b) or (d)” substitute “ or (b) ”;
- (c) omit paragraph (4) <sup>M53</sup>.

#### Marginal Citations

**M51** Paragraph (1B) was inserted by [S.I. 1996/462](#) and amended by [S.I. 1997/65](#) and 1997/2197.

**M52** Paragraph (1C) was inserted by [S.I. 1996/462](#) and amended by [S.I. 1997/65](#) and 2001/3767.

**M53** Paragraph (4) was inserted by [S.I. 1996/462](#).

8. In Schedule 3 (housing costs) <sup>M54</sup>—

- (a) for sub-paragraph (13)(c) of paragraph 3 (circumstances in which a person is to be treated as occupying a dwelling as his home) <sup>M55</sup> substitute—
  - “(c) “residential accommodation” means accommodation which is a care home, an Abbeyfield Home or an an independent hospital;”;
- (b) in sub-paragraph (1)(b) of paragraph 4 (housing costs not met) for “in accommodation which is a residential care home or a nursing home except where he is in such accommodation” substitute “ living in care home, an Abbeyfield Home or an independent hospital except where he is living in such a home or hospital ”.

#### Marginal Citations

**M54** Schedule 3 was substituted by [S.I. 1995/1613](#).

**M55** Sub-paragraph 13(c) of paragraph 3 was amended by [S.I. 2001/3767](#).

9. For sub-paragraph (4) of paragraph 7 (protected persons) of Schedule 3A (protected sum) <sup>M56</sup> substitute—

- “(4) Paragraph 6(b) shall not apply to a protected person if—

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

- (a) he moves to accommodation where he—
  - (i) satisfies condition (i) or (iii) of sub-paragraph (1)(b);
  - (ii) is receiving both board and personal care other than in a care home or an independent hospital;
- (b) he becomes a patient within the meaning of regulation 21(3);
- (c) on his ceasing to be a patient within the meaning of regulation 21(3) either—
  - (i) he returns to the accommodation which he occupied immediately before he became a patient; or
  - (ii) he moves to other accommodation where he—
    - (aa) satisfies condition (i) or (iii) of sub-paragraph (1)(b); or
    - (bb) is receiving both board and personal care other than in a care home or an independent hospital; or
- (d) in a case to which sub-paragraph (6) applies, on his becoming re-entitled to income support, he is in—
  - (i) the accommodation which he occupied immediately before he ceased to be entitled to income support; or
  - (ii) accommodation where he—
    - (aa) satisfies condition (i) or (iii) of sub-paragraph (1)(b); or
    - (bb) is receiving both board and personal care other than in a care home or an independent hospital.”.

**Marginal Citations**

**M56** Schedule 3A was inserted by [S.I. 1988/1455](#). Sub-paragraph (4) of paragraph 7 was amended by [S.I. 1988/2022](#).

**10.** In Schedule 7 (applicable amounts in special cases)—

- (a) in paragraph 9 (specified cases of temporarily separated couples) <sup>M57</sup> at column (1)—
  - (i) in sub-paragraph (a) for heads (i) and (ii) substitute—

“(i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”;
  - (ii) in sub-paragraph (b) for heads (iii) and (iv) substitute—

“(iii) residing in a care home, an Abbeyfield Home or an independent hospital.”;
- (b) in paragraph 10 (polygamous marriages where one or more partners are temporarily separated) <sup>M58</sup> at column (1) for sub-paragraphs (a) and (b) substitute—
  - “(a) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”.

**Marginal Citations**

**M57** Column 1 of paragraph 9 was amended by [S.I. 1989/1678](#).

**M58** Column 1 of paragraph 10 was amended by [S.I. 1988/663](#) and 1991/236.

**11.** In sub-paragraphs (2), (3)(a)(ii) and (4)(a) of paragraph 4 of Schedule 8 (sums to be disregarded in the calculation of earnings) <sup>M59</sup> omit “or in residential accommodation”.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

#### Marginal Citations

**M59** Paragraph 4 was substituted by [S.I. 1989/534](#). Sub-paragraphs (2), (3)(a)(ii) and (4)(a) were amended by [S.I. 2001/3767](#).

- 12.** In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 15A <sup>M60</sup>—
    - (i) in sub-paragraph (1) for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”;
    - (ii) in sub-paragraph (2)(a) for “residential care or nursing home” substitute “ care home, Abbeyfield Home or independent hospital ” and after “the home” insert “ or hospital ”;
  - (b) in paragraph 30A <sup>M61</sup>—
    - (i) in sub-paragraph (1) for “in a residential care home or nursing home” substitute “ residing in a care home, an Abbeyfield Home or an independent hospital ” and after “in that home” add “ or hospital ”;
    - (ii) in sub-paragraph (2) for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”;
  - (c) in paragraph 66 <sup>M62</sup> for “in a residential care or nursing home” substitute “ living in a care home, an Abbeyfield Home or an independent hospital ”.

#### Marginal Citations

**M60** Paragraph 15A was inserted by [S.I. 1993/518](#) and was amended by [S.I. 1995/516](#) and 2005/2078.

**M61** Paragraph 30A was inserted by [S.I. 1993/2119](#) and was amended by [S.I. 2001/3767](#).

**M62** Paragraph 66 was inserted by [S.I. 1998/2117](#); relevant amending instrument [S.I. 2000/681](#).

- 13.** In paragraph 64 <sup>M63</sup> of Schedule 10 (capital to be disregarded) in sub-paragraph (5) for “being in residential accommodation, a residential care home or a nursing home” substitute “ residing in a care home, an Abbeyfield Home or an independent hospital ”.

#### Marginal Citations

**M63** Paragraph 64 was inserted by [S.I. 2001/1118](#).

## SCHEDULE 2

Regulation 3

### AMENDMENT OF THE JOBSEEKER'S ALLOWANCE REGULATIONS 1996

- 1.** In regulation 1 (citation, commencement and interpretation)—
- (a) in paragraph (3)—
    - (i) omit the definitions of “nursing home”, “residential accommodation” and “residential care home”; and
    - (ii) at the appropriate places insert the following definitions—

““Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000, and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001;

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;”;

- (b) in paragraph (3F) <sup>M64</sup> from “residential care home” to “reside in that home” substitute “care home, an Abbeyfield Home or an independent hospital and he is temporarily absent from that home or hospital, he shall be regarded as continuing to reside in that home or hospital ”.

#### Marginal Citations

**M64** Paragraph (3F) was inserted by [S.I. 2001/3767](#) and amended by [S.I. 2003/1195](#).

2. For paragraph (c) of regulation 53 (persons treated as not engaged in remunerative work) <sup>M65</sup> substitute—

- “(c) a person who—
- (i) is in employment;
  - (ii) lives in, or is temporarily absent from a care home, an Abbeyfield Home or an independent hospital; and
  - (iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.”.

#### Marginal Citations

**M65** Paragraph (c) was substituted by [S.I. 2001/3767](#).

3. In regulation 78 (circumstances in which a person is to be treated as being or not being a member of the household)—

- (a) in paragraph (3)(d) for “in residential accommodation or a residential care home or a nursing home” substitute “residing in a care home, an Abbeyfield Home or an independent hospital ”;
- (b) in paragraph (5)(c) omit “provided under any of the provisions referred to in any of the sub-paragraphs (a) to (c) of the definition of residential accommodation in regulation 85”;
- (c) in paragraph (9) before sub-paragraph (a) insert—
  - “(za) “accommodation” means accommodation provided by a local authority in a home owned or managed by that local authority—
  - (i) under sections 21 to 24 of the National Assistance Act 1948 (provision of accommodation); or

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

- (ii) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 (provision of residential or other establishment); or
- (iii) under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.);

where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;”.

**4.** In regulation 85 (special cases)—

- (a) in paragraph (3) <sup>M66</sup> for—
  - (i) “paragraphs 1 and 17” substitute “ paragraph 1 ”;
  - (ii) “residential care or nursing homes” substitute “ care homes, Abbeyfield Homes or independent hospitals ”;
- (b) in paragraph (4) omit the definition of “residential accommodation”; and
- (c) omit paragraphs (5) and (6).

**Marginal Citations**

**M66** Paragraph (3) was amended by [S.I. 2003/455](#).

**5.** In paragraph (11) of regulation 105 (notional income) <sup>M67</sup> for “lives in a residential care home or a nursing home, or is temporarily absent from such a home” substitute “ resides in a care home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital ”.

**Marginal Citations**

**M67** Paragraph (11) was amended by [S.I. 2003/455](#).

**6.** In regulation 116 (calculation of tariff income from capital)—

- (a) in paragraph (1B) <sup>M68</sup> —
  - (i) for sub-paragraphs (a) and (b) substitute—
    - “(a) a care home or an independent hospital;
    - (b) an Abbeyfield Home;”;
  - (ii) omit sub-paragraph (d);
- (b) in paragraph (1C) <sup>M69</sup>—
  - (i) after “home” in both places insert “ , hospital ”;
  - (ii) in sub-paragraph (a) for “, (b) or (d)” substitute “ or (b) ”;
- (c) omit paragraph (4) <sup>M70</sup>.

**Marginal Citations**

**M68** Paragraph (1B) was inserted by [S.I. 1996/1516](#) and amended by [S.I. 1997/65](#) and 1997/2197.

**M69** Paragraph (1C) was inserted by [S.I. 1996/1516](#) and amended by [S.I. 2001/3767](#).

**M70** Paragraph (4) was inserted by [S.I. 1996/1516](#).

**7.** In paragraph (4) of regulation 140 (meaning of “person in hardship”) for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”.

8. In paragraph (4) of regulation 146A (meaning of “couple in hardship”)<sup>M71</sup> for “residential care or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”.

**Marginal Citations**

**M71** Regulation 146A was inserted by [S.I. 2000/1978](#).

9. In Schedule 2 (housing costs)—

(a) for sub-paragraph (13)(c) of paragraph 3 (circumstances in which a person is to be treated as occupying a dwelling as his home) substitute—

“(c) “residential accommodation” means accommodation which is a care home, an Abbeyfield Home or an independent hospital;”;

(b) in sub-paragraph (1)(b) in paragraph 4 (housing costs not met)<sup>M72</sup> for “in accommodation which is a residential care home or a nursing home except where he is in such accommodation” substitute “ living in a care home, an Abbeyfield Home or an independent hospital except where he is living in such a home or hospital ”.

**Marginal Citations**

**M72** Sub-paragraph (1)(b) of paragraph 4 was amended by [S.I. 2000/1978](#).

10. In Schedule 5 (applicable amounts in special cases)—

(a) in paragraph 5 (specified cases of temporarily separated couples) at column (1)—

(i) in sub-paragraph (a), for heads (i) and (ii) substitute—

“(i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”;

(ii) in sub-paragraph (b), for heads (iii) and (iv) substitute—

“(iii) residing in a care home, an Abbeyfield Home or an independent hospital.”;

(b) in paragraph 6 (polygamous marriages where one or more partners are temporarily separated) at column (1), for sub-paragraphs (a) and (b) substitute—

“(a) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”;

11. In Schedule 5A (applicable amounts of joint-claim couples in special cases)<sup>M73</sup>—

(a) in paragraph 4 (specified cases of temporarily separated joint-claim couples) at column (1)—

(i) in sub-paragraph (a), for heads (i) and (ii) substitute—

“(i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”;

(ii) in sub-paragraph (b), for heads (iii) and (iv) substitute—

“(iii) residing in a care home, an Abbeyfield Home or an independent hospital.”;

(b) in paragraph 5 (polygamous marriages where one or more members of the marriage are temporarily separated) at column (1) for sub-paragraphs (a) and (b) substitute—

“(a) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital, or”.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

**Marginal Citations**

**M73** Schedule 5A was inserted by [S.I. 2000/1978](#).

**12.** In paragraph 5 of Schedule 6 (sums to be disregarded in the calculation of earnings) <sup>M74</sup> in sub-paragraphs (2), (3)(a)(ii) and (4)(a) omit “or in residential accommodation”.

**Marginal Citations**

**M74** Relevant amending instrument is [S.I. 2001/3767](#).

**13.** In paragraph 1 of Schedule 6A (sums to be disregarded in the calculation of earnings of members of joint-claim couples) <sup>M75</sup> in sub-paragraphs (2), (3)(a)(ii) and (4)(a) omit “or in residential accommodation”.

**Marginal Citations**

**M75** Schedule 6A was inserted by [S.I. 2000/1978](#). Paragraph 1 was amended by [S.I. 2000/2545](#) and [2001/3767](#).

**14.** In Schedule 7 (sums to be disregarded in the calculation of income other than earnings) <sup>M76</sup>—

(a) in paragraph 16—

- (i) in sub-paragraph (1), for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or independent hospital ”;
- (ii) in sub-paragraph (2)(a), for “residential care or nursing home” substitute “ care home, Abbeyfield Home or independent hospital ” and after “ the home” add “ or hospital ”;

(b) in paragraph 32—

- (i) in sub-paragraph (1), for “in a residential care home or nursing home” substitute “ residing in a care home, an Abbeyfield Home or an independent hospital ” and after “in that home” add “ or hospital ”;
- (ii) in sub-paragraph (2), for “residential care home or nursing home” substitute “ care home, an Abbeyfield Home or an independent hospital ”;

(c) in paragraph 64 for “in a residential care or nursing home” substitute “ residing in a care home, an Abbeyfield Home or an independent hospital ”.

**Marginal Citations**

**M76** Paragraph 16 was amended by [S.I. 2001/3767](#) and [2005/2078](#), paragraph 32 was amended by [S.I. 2001/3767](#) and paragraph 64 was inserted by [S.I. 1998/2117](#).

**15.** In paragraph 57 of Schedule 8 (capital to be disregarded) <sup>M77</sup> in sub-paragraph (5) for “being in residential accommodation, a residential care home or a nursing home” substitute “ residing in a care home, an Abbeyfield Home or an independent hospital ”.



**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

**Marginal Citations**

**M77** Paragraph 57 was inserted by S.I. 2001/1118.

SCHEDULE 3

Regulation 4

AMENDMENT OF THE HOUSING BENEFIT (GENERAL) REGULATIONS 1987

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

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**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

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**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3** ...

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

SCHEDULE 4

Regulation 5

AMENDMENT OF THE COUNCIL TAX BENEFIT (GENERAL) REGULATIONS 1992

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**F3** Sch. 34 revoked (6.3.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** ....

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

**F3** Sch. 34 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

**F3F3** .....

**F3** Sch. 34 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, 4)

## SCHEDULE 5

Regulation 6

### AMENDMENT OF THE STATE PENSION CREDIT REGULATIONS 2002

1. In paragraph (2) of regulation 1 (citation, commencement and interpretation) at the appropriate place insert the following definition— “independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001; ”.

2. In paragraph (1)(b) of regulation 5 (persons treated as being or not being members of the same household) after “care home” insert “ or an independent hospital ”.

3. In paragraph (c) of regulation 12 (end of assessed income period) after “care home” insert “ or an independent hospital ”.

4. For paragraph (7)(d) of regulation 15 (income for purposes of the Act)<sup>M78</sup> substitute—  
“(d) in an independent hospital;”.

#### Marginal Citations

**M78** Paragraph (7)(d) of regulation 15 was amended by [S.I. 2005/2078](#).

5. In Schedule 2 (housing costs)—

(a) in paragraph 4 (circumstances in which a person is to be treated as occupying a dwelling as his home)—

(i) in sub-paragraph (7)(c)(iii), after “care home” insert “ or an independent hospital ”;

(ii) for sub-paragraph (8) substitute—

“(8) This sub-paragraph applies to a person who enters a care home or an independent hospital—

(a) for the purpose of ascertaining whether that care home or independent hospital suits his needs, and

(b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event that, the care home or independent hospital prove not to suit his needs,

and while in the care home or independent hospital, the part of the dwelling which he normally occupies as his home is not let, or as the case may be, sub-let to another person.”.

(iii) in sub-paragraph (9) for “accommodation” in both places substitute “ care home or independent hospital ”;

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)

(iv) in sub-paragraph (11)(c), at heads (iii), (vii) and (ix) after “care home” insert “ or an independent hospital ”;

(b) in paragraph 5(1)(b) after “care home” insert “ or an independent hospital ”.

6. In paragraph 13(5) of Schedule 5 (capital disregarded for the purpose of calculating income) for “being in a care home” substitute “ residing in a care home or an independent hospital ”.

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## EXPLANATORY NOTE

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

These Regulations make amendments to social security legislation that are consequential upon the introduction of a new regulatory system in England and Wales of “care homes” and “independent hospitals” by the Care Standards Act 2000 (c. 14) and, in Scotland, of “care home services” and “independent health care services” by the Regulation of Care (Scotland) Act 2001 (asp8). This has replaced the previous system of regulation of residential care homes and nursing homes, as provided for by the Registered Homes Act 1984 (c. 23) in England and Wales, and, in Scotland by the Nursing Homes Registration (Scotland) Act 1938 (c. 73) and the Social Work (Scotland) Act 1968 (c. 49). The new systems also require the registration of care homes provided by local authorities, which were previously unregulated.

The Regulations therefore replace references in social security legislation to terms describing these establishments, which were based on the old regulatory systems, with new terms in line with the current regulatory systems.

These Regulations make amendments to the following sets of regulations—

- (i) The Income Support (General) Regulations 1987 (S.I. 1987/1967) (at regulation 2 and Schedule 1);
- (ii) The Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) (at regulation 3 and Schedule 2);
- (iii) The Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) (at regulation 4 and Schedule 3);
- (iv) The Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) (at regulation 5 and Schedule 4);
- (v) The State Pension Credit Regulations 2002 (S.I. 2002/1792) (at regulation 6 and Schedule 5);
- (vi) The Social Fund Winter Fuel Payment Regulations 2000 (S.I. 2000/729) (at regulation 8);
- (vii) The Social Fund Cold Weather Payments (General) Regulations 1988 (S.I. 1988/1724) (at regulation 9);
- (viii) The Social Fund Maternity and Funeral Expenses (General) Regulations 1987 (S.I. 1987/481) (at regulation 10);
- (ix) The Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) (at regulation 11);
- (x) The Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740) (at regulation 12);
- (xi) The Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) (at regulation 13);

**Changes to legislation:** *There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005. (See end of Document for details)*

(xii) The Social Security (Breach of Community Order) Regulations 2001 (S.I. 2001/1395) (at regulation 14); and

(xiii) The Social Security (Loss of Benefit) Regulations 2001 (S.I. 2001/4022) (at regulation 15). Paragraphs 10 to 12 of Schedule 3 to the Regulations make transitional provision to preserve the existing transitional protection provided to a closed category of housing benefit claimants in certain types of residential accommodation.

The Regulations also revoke the Income Support and Jobseeker's Allowance (Amounts for Persons in Residential Care and Nursing Homes) Regulations 2001 (S.I. 2001/1785) which, due to the amendments made by the Social Security Amendment (Residential Care and Nursing Homes) Regulations 2001 (S.I. 2001/3767), are obsolete (at regulation 7).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Care Homes and Independent Hospitals) Regulations 2005.