
STATUTORY INSTRUMENTS

1991 No. 1712 (N.I. 17)

NORTHERN IRELAND

**The Disability Living Allowance and Disability
Working Allowance (Northern Ireland) Order 1991**

Made - - - - *24th July 1991*
Laid before Parliament *1st August 1991*
Coming into operation in accordance with Article 1

At the Court at Buckingham Palace, the 24th day of July 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Disability Living Allowance and Disability Working Allowance Act 1991:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the [1974 c. 28](#) Northern Ireland Act 1974 (as modified by section 13 of the said Act of 1991) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title, citation and commencement

1.—(1) This Order may be cited as the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 and it shall be included among the statutory provisions which may be cited together as the Social Security (Northern Ireland) Acts 1975 to 1991.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) This Article, Article 2 and Article 14 shall come into operation on the twenty-first day after the day on which this Order is made.

(4) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973 as necessary or expedient in consequence of this Order which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Attendance Allowance Board” means the Attendance Allowance Board for Northern Ireland;

“the Board” means the Disability Living Allowance Advisory Board for Northern Ireland;

“the Department” means the Department of Health and Social Services;

“the 1986 Order” means the Social Security (Northern Ireland) Order 1986;

“the Pensions Order” means the Social Security Pensions (Northern Ireland) Order 1975;

“the principal Act” means the Social Security (Northern Ireland) Act 1975;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Disability living allowance

Introduction of disability living allowance

3.—(1) After subsection (1)(c) of section 34 (descriptions of non-contributory benefits) of the principal Act there shall be inserted the following paragraph—

“(ca) disability living allowance;”.

(2) After section 37 of the principal Act there shall be inserted the following sections—

“Disability living allowance.

37ZA.—(1) Disability living allowance shall consist of a care component and a mobility component.

(2) A person’s entitlement to a disability living allowance may be an entitlement to either component or to both of them.

(3) A person may be awarded either component for a fixed period or for life, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.

(4) The weekly rate of a person’s disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.

(5) The weekly rate of a person’s disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.

(6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Northern Ireland.

The care component.

37ZB.—(1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—

(a) he is so severely disabled physically or mentally that—

- (i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods), or
 - (ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or
 - (b) he is so severely disabled physically or mentally that, by day, he requires from another person—
 - (i) frequent attention throughout the day in connection with his bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
 - (c) he is so severely disabled physically or mentally that, at night,—
 - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
 - (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- (2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—
 - (a) throughout-
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
 - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
 - (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) a period of 6 months beginning with that date, or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (3) Three weekly rates of the care component shall be prescribed.
- (4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—
 - (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
 - (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
 - (c) the lowest rate in any other case.
- (5) For the purposes of this section, a person who is terminally ill, as defined in section 35(2C) above, and makes a claim expressly on the ground that he is such a person, shall be taken—
 - (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and

- (b) to satisfy or to be likely to satisfy those conditions for the remainder of his life beginning with that date.
- (6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—
- (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and
 - (b) neither the condition mentioned in sub-paragraph (i) of subsection (1)(a) above nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—
 - (i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age, or
 - (ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.
- (7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.
- (8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—
- (a) in pursuance of Article 5, 7, 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972; or
 - (b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

The mobility component.

- 37ZC.**—(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—
- (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or
 - (b) he falls within subsection (2) below; or
 - (c) he falls within subsection (3) below; or
 - (d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.
- (2) A person falls within this subsection if—
- (a) he is both blind and deaf; and
 - (b) he satisfies such other conditions as may be prescribed.
- (3) A person falls within this subsection if—
- (a) he is severely mentally impaired; and
 - (b) he displays severe behavioural problems; and
 - (c) he satisfies both the conditions mentioned in section 37ZB(1)(b) and (c) above.

(4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—

- (a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or
- (b) persons of his age in normal physical and mental health would not require such guidance or supervision.

(5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.

(6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.

(7) A person who is to be taken for the purposes of section 37ZB above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

(8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.

(9) A person shall not be entitled to the mobility component of a disability living allowance unless—

- (a) throughout—
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
 - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and
- (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) a period of 6 months beginning with that date, or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

(10) Two weekly rates of the mobility component shall be prescribed.

(11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—

- (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1) (a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
- (b) the lower rate in any other case.

(12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 35(2C) above, and who makes a claim expressly on the ground that he is such a person—

- (a) subsection (9)(a) above shall be omitted; and
- (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.

(13) Regulations may prescribe cases in which a person who has the use—

- (a) of an invalid carriage or other vehicle provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978; or
- (b) of any prescribed description of appliance supplied under that Order being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.

(14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

Persons 65 or over.

37ZD.—(1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains the age of 65 otherwise than by virtue of an award made before he attains that age.

(2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, so far as it so relates, and any provision of Part VII of the Social Security (Northern Ireland) Order 1986 which is relevant to disability living allowance—

- (a) shall have effect subject to modifications, additions or amendments; or
- (b) shall not have effect.

Disability living allowance— supplementary.

37ZE.—(1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.

(2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.

(3) For the purposes of sections 37ZB(5) and 37ZC(12) above, where—

- (a) a person purports to make a claim for a disability living allowance on behalf of another; and
- (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,

that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority. ”.

Attendance allowance and mobility allowance

4.—(1) In section 35(1) of the principal Act (qualifications for attendance allowance), for the words “or presence in Northern Ireland” there shall be substituted the words “and presence in

Northern Ireland, he is aged 65 or over, he is not entitled to the care component of a disability living allowance”.

- (2) The Attendance Allowance Board is hereby dissolved.
- (3) Section 37A of the principal Act (mobility allowance) shall cease to have effect.

Disability Living Allowance Advisory Board for Northern Ireland

5.—(1) There shall be a body, to be known as the Disability Living Allowance Advisory Board for Northern Ireland.

(2) Regulations shall confer on the Board such functions relating to disability living allowance or attendance allowance as the Department thinks fit and shall make provision for—

- (a) the Board’s constitution;
 - (b) the qualifications of its members;
 - (c) the method of their appointment;
 - (d) the term of office and other terms of appointment of its members;
 - (e) their removal.
- (3) Regulations may also make provision—
- (a) enabling the Board to appoint persons as advisers to it on matters on which in its opinion they are specially qualified;
 - (b) for the appointment of officers and servants of the Board;
 - (c) enabling the Board to act notwithstanding any vacancy among its members;
 - (d) enabling the Board to make rules for regulating its procedure (including its quorum).
- (4) The expenses of the Board to such an amount as may be approved by the Department of Finance and Personnel shall be paid by the Department.
- (5) There may be paid as part of the expenses of the Board—
- (a) to all or any of the members of the Board, such salaries or other remuneration and travelling and other allowances;
 - (b) to advisers to the Board, such fees; and
 - (c) to such other persons as may be specified in regulations such travelling and other allowances (including compensation for loss of remunerative time),

as the Department may with the consent of the Department of Finance and Personnel determine.

(6) The Department may furnish the Board with such information as the Department considers that the Board may need to enable it to discharge its functions.

(7) Regulations under this Article may make such incidental, supplementary, consequential or transitional provision as appears to the Department to be expedient for the purposes of the regulations.

(8) In this Article “regulations” means regulations made by the Department.

Management of disability living allowance and attendance allowance, etc.

6.—(1) Schedule 1 shall have effect in relation to the management of disability living allowance and attendance allowance.

- (2) Schedule 2 which makes further amendments shall have effect.

Regulations supplementary to Articles 3 to 6

7.—(1) The Department may make such regulations as appear to it necessary or expedient in relation to the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board.

- (2) Without prejudice to the generality of this Article, regulations under this Article—
- (a) may provide for the termination or cancellation of awards of attendance allowance and awards of mobility allowance;
 - (b) may direct that a person whose award of either allowance has been terminated or cancelled by virtue of the regulations or who is a child of such a person shall by virtue of the regulations be treated as having been awarded one or more disability living allowances;
 - (c) may direct that a disability living allowance so treated as having been awarded shall consist of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded either component at such weekly rate and for such period as the regulations may specify;
 - (d) may provide for the termination in specified circumstances of an award of disability living allowance;
 - (e) may direct that in specified circumstances a person whose award of disability living allowance has been terminated by virtue of the regulations shall by virtue of the regulations be treated as having been granted a further award of a disability living allowance consisting of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded on the further award either component at such weekly rate and for such period as the regulations may specify;
 - (f) may provide for the review of awards made by virtue of sub-paragraph (b) or (e) and for the treatment of claims for disability living allowance in respect of beneficiaries with such awards;
 - (g) may direct that for specified purposes certificates issued by the Attendance Allowance Board shall be treated as evidence of such matters as may be specified in the regulations;
 - (h) may direct that for specified purposes the replacement of attendance allowance and mobility allowance by disability living allowance shall be disregarded;
 - (i) may direct that a claim for attendance allowance or mobility allowance shall be treated in specified circumstances and for specified purposes as a claim for disability living allowance or that a claim for disability living allowance shall be treated in specified circumstances and for specified purposes as a claim for attendance allowance or mobility allowance or both;
 - (j) may direct that in specified circumstances and for specified purposes a claim for a disability living allowance shall be treated as having been made when no such claim was in fact made;
 - (k) may direct that in specified circumstances a claim for attendance allowance, mobility allowance or disability living allowance shall be treated as not having been made;
 - (l) may direct that in specified circumstances where a person claims attendance allowance or mobility allowance or both, and also claims disability living allowance his claims may be treated as a single claim for such allowances for such periods as the regulations may specify;
 - (m) may direct that cases relating to mobility allowance shall be subject to adjudication in accordance with the provisions of the principal Act relating to disability living allowance; and

(n) may direct that, at a time before the Attendance Allowance Board is dissolved, in specified circumstances cases relating to attendance allowance shall be subject to adjudication under the system of adjudication for such cases introduced by this Order.

(3) Regulations under this Article may provide that any provision of the principal Act which relates to disability living allowance, attendance allowance or mobility allowance so far as it so relates, and any provision of Part VII of the 1986 Order which is relevant to disability living allowance, attendance allowance or mobility allowance—

- (a) shall have effect subject to modifications, additions or amendments; or
- (b) shall not have effect.

(4) Subsections (1), (2) and (3A) of section 155 of the principal Act shall apply in relation to the power conferred by this Article to make regulations as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to this Article.

Disability working allowance

Introduction of disability working allowance

8.—(1) Article 21 (income-related benefits) of the 1986 Order shall be amended in accordance with paragraphs (2) to (7).

(2) In paragraph (1), after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(bb) disability working allowance;”.

(3) In paragraph (2) for the words “or (b)” there shall be substituted the words “, (b) or (bb)”.

(4) After paragraph (6) there shall be inserted the following paragraphs—

“(6A) A person in Northern Ireland who has attained the age of 16 and qualifies under paragraph (6B) is entitled to a disability working allowance if, when the claim for it is made or is treated as made—

- (a) he is engaged and normally engaged in remunerative work;
- (b) he has a physical or mental disability which puts him at a disadvantage in getting a job;
- (c) his income—
 - (i) does not exceed the applicable amount; or
 - (ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which Article 22(3B) provides is made; and
- (d) except in such circumstances as may be prescribed, neither he nor, if he has a family, any member of it, is entitled to family credit.

(6B) Subject to paragraph (6E), a person qualifies under this paragraph if—

- (a) for one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made there was payable to him one or more of the following—
 - (i) an invalidity pension under section 15 of the principal Act;
 - (ii) an invalidity pension under Article 17 or 18 of the Pensions Order;
 - (iii) a severe disablement allowance under section 36 of the principal Act;
 - (iv) income support or housing benefit;

or a corresponding benefit under any statutory provision having effect in Great Britain;

- (b) when the claim for a disability working allowance is made or is treated as made, there is payable to him one or more of the following—
- (i) an attendance allowance under section 35 of the principal Act;
 - (ii) a disability living allowance under section 37ZA of that Act;
 - (iii) an increase of disablement pension under section 61 of that Act (constant attendance allowance);
 - (iv) an analogous pension increase under a war pension scheme or the industrial injuries regulations;

or a corresponding benefit under any statutory provision having effect in Great Britain; or

- (c) when the claim for a disability working allowance is made or is treated as made, he has an invalid carriage or other vehicle provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978.

(6C) For the purposes of paragraph (6A) a person has a disability which puts him at a disadvantage in getting a job only if he satisfies prescribed conditions or prescribed circumstances exist in relation to him.

(6D) In paragraph (6A)(c) “the applicable amount” means the applicable amount at such date as may be prescribed.

(6E) If the only benefit mentioned in sub-paragraph (a) of paragraph (6B) which is payable to a person as there mentioned is—

- (a) a benefit mentioned in head (iv) of that sub-paragraph; or
- (b) a corresponding benefit under any statutory provision having effect in Great Britain,

he only qualifies under that paragraph in prescribed circumstances.

(6F) A disability working allowance shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of a disability working allowance and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under Article 64.”

(5) In the application of paragraph (6B) of Article 21 to claims made or treated as made before the first day in respect of which disability living allowance is payable, sub-paragraph (b) of that paragraph shall have effect as if for head (ii) there were substituted the following head—

“(ii) a mobility allowance under section 37A of that Act;”.

(6) In paragraph (11)—

- (a) after the definition of “family” there shall be inserted the following definition—

““the industrial injuries regulations” means the regulations made under section 150 of the principal Act or under the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975;” and

- (b) after the definition of “unmarried couple” there shall be inserted the following definition—

““war pension scheme” means a scheme under which war pensions (as defined in section 25 of the Social Security Act 1989) are provided;”.

(7) In paragraph (12), after sub-paragraph (f) there shall be inserted the following sub-paragraph—

“(ff) specifying the descriptions of pension increases under war pension schemes or the industrial injuries regulations that are analogous to the benefits mentioned in paragraph (6B)(b)(i) to (iii);”.

(8) In Article 22 of the 1986 Order (amount of income-related benefits), after paragraph (3) there shall be inserted the following paragraphs—

“(3A) Where a person is entitled to a disability working allowance by virtue of Article 21(6A)(c)(i), the amount shall be the amount which is the appropriate maximum disability working allowance in his case.

“(3B) Where a person is entitled to a disability working allowance by virtue of Article 21(6A)(c)(ii), the amount shall be what remains after the deduction from the appropriate maximum disability working allowance of a prescribed percentage of the excess of his income over the applicable amount.”.

(9) In paragraph (6) of that Article, after sub-paragraph (a) there shall be inserted the following sub-paragraph—

“(aa) the appropriate maximum disability working allowance;”.

Disability working allowance—supplementary

9.—(1) After Article 28A of the 1986 Order there shall be inserted the following—

“Disability working allowance

Supplementary provisions about disability working allowance

28B.—(1) In this Article—

“initial claim” means a claim for a disability working allowance made by a person—

- (a) to whom it has not previously been payable; or
- (b) to whom it has not been payable during the period of 2 years immediately preceding the date on which the claim is made or is treated as made; and

“repeat claim” means any other claim for a disability working allowance.

(2) On an initial claim a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is conclusive, except in such circumstances as may be prescribed, that for the purposes of Article 21(6A)(b) he has such a disability in accordance with regulations under Article 21(6C).

(3) If—

- (a) a repeat claim is made or treated as made not later than the end of the period of 8 weeks commencing with the last day of the claimant’s previous award; and
- (b) on the claim which resulted in that award he qualified under Article 21(6B) by virtue—
 - (i) of sub-paragraph (a) of that paragraph; or
 - (ii) of there being payable to him a benefit under a statutory provision having effect in Great Britain and corresponding to a benefit mentioned in that sub-paragraph,

all be treated on the repeat claim as if he still so qualified.

(4) Regulations may provide that an award of a disability working allowance to a person shall terminate if—

- (a) a disability working allowance becomes payable in respect of some other person who was a member of his family at the date of his claim for a disability working allowance; or
- (b) income support or family credit becomes payable in respect of a person who was a member of the family at that date.”

(2) Schedule 3 which makes further amendments shall have effect.

Effect on entitlement to family credit of entitlement to disability working allowance

10.—(1) In paragraph (5)(b) of Article 21 of the 1986 Order, after the words “remunerative work;” there shall be inserted the words—

“(bb) except in such circumstances as may be prescribed, neither he nor any member of his family is entitled to a disability working allowance;”.

(2) In paragraph (10)(b) of that Article, after the words “income support” there shall be inserted the words “or a disability working allowance”.

Entitlement to other benefits after termination of entitlement to disability working allowance

11.—(1) In section 15 of the principal Act (invalidity pension), after subsection (5) there shall be inserted the following subsections—

“(5A) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under this section having been payable to him; and
- (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(5B) Any day other than a Sunday or a day prescribed under section 17(1)(e) below is a relevant day for the purposes of subsection (5A) above.”.

(2) In section 36 of that Act (severe disablement allowance), after subsection (6B) there shall be inserted the following subsection—

“(6C) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

- (c) he qualified for a disability working allowance for that week by virtue of a severe disablement allowance having been payable to him; and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for a severe disablement allowance for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was both incapable of work and disabled.”.

- (3) After Article 18 of the Pensions Order there shall be inserted the following Article—

“Entitlement to invalidity pension after termination of entitlement to disability working allowance

18A.—(1) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under Article 17 or 18 having been payable to him; and
- (d) the first relevant day after he ceases to be engaged as mentioned in sub-paragraph (a) is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in sub-paragraph (a) as having been a day on which he was incapable of work.

(2) Any day other than a Sunday or a day prescribed under section 17(1)(e) of the principal Act is a relevant day for the purposes of this Article.”.

- (4) In Schedule 17 to the principal Act, at the end of the definition of “week” there shall be added the words “and except in relation to disability working allowance”.

(5) Where—

- (a) a person becomes entitled to an invalidity pension or a severe disablement allowance by virtue of section 15(5A) or 36(6C) of the principal Act or Article 18A of the Pensions Order; and
- (b) when he was last entitled to that pension or allowance, it was increased in respect of a dependant by virtue of—
 - (i) regulation 8(6) of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977;
 - (ii) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations (Northern Ireland) 1984;
 - (iii) regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1984; or

(iv) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) (Amendment) Regulations (Northern Ireland) 1989,

for the purpose of determining whether his pension or allowance should be increased by virtue of that regulation for any period beginning with the day on which he again becomes entitled to his pension or allowance, the increase in respect of that dependant shall be treated as having been payable to him on each day between the last day on which his pension or allowance was previously payable and the day on which he again becomes entitled to it.

General

Repeals

12. The statutory provisions mentioned in Schedule 4 are hereby repealed to the extent specified in the third column of that Schedule.

Supplementary

13.—(1) The Department may by regulations make—

- (a) such consequential provision, or
- (b) such savings,

as it considers necessary or expedient in preparation for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

(2) Subsections (1), (2) and (3A) of section 155 of the principal Act shall apply in relation to the power conferred by this Article to make regulations as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to this Article.

Regulations

14.—(1) Section 156(1) of the principal Act shall apply to—

- (a) regulations under Chapter 11 of Part 11 of the principal Act which relate to disability living allowance and are made before the first day in respect of which disability living allowance is payable;
- (b) regulations under sections 100A to 100D or section 104A of that Act which relate to attendance allowance or disability living allowance and are made before that day;
- (c) regulations under Part 111 of the 1986 Order or under sections 100A to 100D or section 104A of the principal Act which relate to disability working allowance and are made before the first day in respect of which disability working allowance is payable;
- (d) the first regulations made under Article 5;
- (e) the first regulations made under Article 7;

and any regulations contained in a statutory rule which includes any regulations to which the foregoing sub-paragraphs apply.

(2) Regulations under this Order, other than those to which section 156(1) of the principal Act applies, shall be subject to negative resolution.

(3) If the Department of Finance and Personnel so directs, regulations under this Order shall be made only in conjunction with it.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 6(1).

MANAGEMENT OF DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE

1. The principal Act shall be amended as follows.

Adjudication

2. In section 98(1)

- (a) at the beginning insert “Subject to section 115C(1) below,”; and
- (b) for “104” substitute “104A”.

3.—(1) In subsection (1) of section 99, after “section 98” insert “(other than a claim which under section 100A(11) or (12) or 104A(5) falls to be treated as an application for a review)”.

(2) In subsection (2) of that section, after “questions),” insert “and subject also to subsection (2A) below,”.

- (3) After that subsection insert the following subsection—

“(2A) The adjudication officer must decide a claim for or question relating to an attendance allowance or a disability living allowance himself.”.

Reviews and appeals

4. In section 100—

- (a) in subsection (1), after “question,” insert “other than a claim or question relating to an attendance allowance or a disability living allowance,”;
- (b) in subsection (2), after “decision” insert “falling within subsection (1) above”; and
- (c) in subsection (6), after “amount” insert “of benefit (other than an attendance allowance or a disability living allowance)”.

5. After section 100 insert the following sections—

“Reviews of decisions by adjudication officers as to attendance allowance or disability living allowance.

100A.—(1) On an application under this section made within the prescribed period, a decision of an adjudication officer under section 99 above which relates to an attendance allowance or a disability living allowance may be reviewed on any ground.

(2) On an application under this section made after the end of the prescribed period, such a decision may be reviewed if—

- (a) the adjudication officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) it is anticipated that a relevant change of circumstances will so occur; or
- (d) the decision was erroneous in point of law; or
- (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,

but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.

(3) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (2)(b) and (c) above.

(4) On an application under this section made after the end of the prescribed period a decision of an adjudication officer under section 99 above that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above may be reviewed if there has been a change of medical opinion with respect to his condition or his reasonable expectation of life.

(5) The claimant shall be given such notification as may be prescribed of a decision which may be reviewed under this section and of his right to a review under subsection (1) above.

(6) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer stating the grounds of the application and supplying such information and evidence as may be prescribed.

(7) Regulations—

- (a) may provide for enabling or requiring, in prescribed circumstances, a review under this section notwithstanding that no application under subsection (6) above has been made; and
- (b) if they do so provide, shall specify under which provision of this section a review carried out by virtue of any such regulations falls.

(8) Reviews under this section shall be carried out by adjudication officers.

(9) Different aspects of any question which arises on such a review may be dealt with by different adjudication officers; and for this purpose this section and the other provisions of this Part of this Act which relate to reviews under this section shall apply with any necessary modifications.

(10) If a review is under subsection (1) above, the officer who took the decision under review shall not deal with any question which arises on the review.

(11) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance by an adjudication officer is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.

(12) Where—

- (a) a claim for an attendance allowance or a disability living allowance in respect of a person has been refused; and
- (b) a further claim for the same allowance is made in respect of him within the period prescribed under subsection (1) above,

the further claim shall be treated as an application for a review under that subsection.

Further reviews of decisions as to attendance allowance or disability living allowance.

100B.—(1) Subsections (2) and (4) of section 100A above shall apply to a decision on a review under subsection (1) of that section as they apply to a decision of an adjudication officer under section 99 above but as if the words “made after the end of the prescribed period” were omitted from each subsection.

(2) Subsections (1), (2) and (4) of section IOOA above shall apply—

- (a) to a decision on a review under subsection (2) or (4) of that section; and
- (b) to a refusal to review a decision under subsection (2) or (4) of that section,

as they apply to a decision of an adjudication officer under section 99 above.

(3) The claimant shall be given such notification as may be prescribed—

- (a) of a decision on a review under section 100A above;
- (b) if the review was under section IOOA(1), of his right of appeal under section 100D below; and
- (c) if it was under section IOOA(2) or (4), of his right to a further review under section IOOA(1).

Reviews of decisions as to attendance allowance or disability living allowance: supplementary.

100C.—(1) An award of an attendance allowance or a disability living allowance on a review under section 100A above replaces any award which was the subject of the review.

(2) Where a person who has been awarded a disability living allowance consisting of one component applies or is treated as applying for a review under section 100A above and alleges that he is also entitled to the other component, the adjudication officer need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

(3) Where a person who has been awarded a disability living allowance consisting of both components applies or is treated as applying for a review under section 100A above and alleges that he is entitled to one component at a rate higher than that at which it has been awarded, the adjudication officer need not consider the question of his entitlement to the other component or the rate of that component.

(4) Where a person has been awarded a component for life, on a review under section 100A above the adjudication officer shall not consider the question of his entitlement to that component or the rate of that component or the period for which it has been awarded unless—

- (a) the person awarded the component expressly applies for the consideration of that question; or
- (b) information is available to the adjudication officer which gives him reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue.

(5) No decision which relates to an attendance allowance or a disability living allowance shall be reviewed under section 100A above on the ground that the person is or was at any time terminally ill, within the meaning of section 35(2C) above, unless an application for review is made expressly on that ground either—

- (a) by the person himself; or

(b) by any other person purporting to act on his behalf, whether or not that other person is acting with his knowledge or authority;

and a decision may be so reviewed on such an application, notwithstanding that no claim under section 35(2B) or 37ZB(5) or 37ZC(12) above has been made.

(6) Where a decision is reviewed under section 100A above on the ground that it is anticipated that a change of circumstances will occur, the decision given on review—

- (a) shall take effect on the day prescribed for that purpose by reference to the date on which the change of circumstances is expected to occur; and
- (b) shall be reviewed again if the change of circumstances either does not occur or occurs otherwise than on that date.

(7) Where a claimant has appealed against a decision of an adjudication officer under section 100D below and the decision is reviewed again under section 100A(2) or (4) above by an adjudication officer, then—

- (a) if the adjudication officer considers that the decision which he has made on the review is the same as the decision that would have been made on the appeal had every ground of the appeal succeeded, then the appeal shall lapse; but
- (b) in any other case, the review shall be of no effect and the appeal shall proceed accordingly.

(8) Subsections (5) and (7) to (10) of section 104 below apply in relation to a review under section 100A above as they apply to a review under that section but as if—

- (a) subsection (5)(a) were omitted; and
- (b) in subsection (7) for the words “subsection (1A) above” there were substituted the words “section 100A above on the ground that it was erroneous in point of law”.

(9) Where an adjudication officer has determined that any amount paid by way of an attendance allowance or a disability living allowance is recoverable under or by virtue of Article 54 of the Social Security (Northern Ireland) Order 1986 (overpayments), any person from whom he has determined that it is recoverable shall have the same right of review under section 100A above as a claimant.

(10) This Act shall have effect in relation to a review by virtue of subsection (9) above as if any reference to the claimant were a reference to the person from whom the adjudication officer has determined that the amount in question is recoverable.

Appeals following reviews of decisions as to attendance allowance or disability living allowance.

100D.—(1) Where an adjudication officer has given a decision on a review under section 100A(1) above, the claimant or such other person as may be prescribed may appeal—

- (a) in prescribed cases, to a disability appeal tribunal; and
- (b) in any other case, to a social security appeal tribunal.

(2) Regulations may make provision as to the manner in which, and the time within which, appeals are to be brought.

(3) An award of an attendance allowance or a disability living allowance on an appeal replaces any award which was the subject of the appeal.

(4) Where a person who has been awarded a disability living allowance consisting of one component alleges on an appeal that he is also entitled to the other component, the tribunal

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need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

(5) Where a person who has been awarded a disability living allowance consisting of both components alleges on an appeal that he is entitled to one component at a rate higher than that at which it has been awarded, the tribunal need not consider the question of his entitlement to the other component or the rate of that component.

(6) The tribunal shall not consider—

(a) a person’s entitlement to a component which has been awarded for life; or

(b) the rate of a component so awarded; or

(c) the period for which a component has been so awarded, unless—

(i) the appeal expressly raises that question; or

(ii) information is available to the tribunal which gives it reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue.

(7) Schedule 10A to this Act has effect with respect to disability appeal tribunals.”.

6. In section 101—

(a) in subsection (1), after “local tribunal” insert “or disability appeal tribunal”; and

(b) in subsection (5A)(a) omit “of a social security appeal tribunal”.

7.—(1) In section 102(1)

(a) after “local tribunal” insert “, a disability appeal tribunal”; and

(b) for “or”, in the second place where it occurs, substitute “, subject to subsection (3) below, or the”.

(2) After subsection (2) add the following subsection—

“(3) A social security appeal tribunal may not determine a question by virtue of subsection (1) above if an appeal in relation to such a question would have lain to a disability appeal tribunal.”.

8. In section 104 insert “other than a decision relating to an attendance allowance or a disability living allowance)”—

(a) in subsection (1), after “a Commissioner”; and

(b) in subsection (1A), after “adjudication officer”, in the first place where it occurs.

9. After section 104 insert the following section—

“Reviews of decisions on appeal as to attendance allowance and disability living allowance.

104A.—(1) Any decision under this Act of a social security appeal tribunal, a disability appeal tribunal or a Commissioner which relates to an attendance allowance or a disability living allowance may be reviewed at any time by an adjudication officer if—

(a) he is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(b) there has been any relevant change of circumstances since the decision was given; or

(c) it is anticipated that a relevant change of circumstances will so occur; or

- (d) the decision was that a person is or was at any time terminally ill for the purposes of section 35(2B), 37ZB(5) or 37ZC(12) above and there has been a change of medical opinion with respect to his condition or his reasonable expectation of life; or
- (e) the decision was to make an award for a period wholly or partly after the date on which the claim was made or treated as made but subject to a condition being fulfilled and that condition has not been fulfilled,

but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer is satisfied as mentioned in that paragraph by fresh evidence.

(2) Regulations may prescribe what are, or are not, relevant changes of circumstances for the purposes of subsection (1)(b) and (c) above.

(3) A question may be raised with a view to a review under this section by means of an application made in writing to an adjudication officer, stating the grounds of the application and supplying such information and evidence as may be prescribed.

(4) Reviews under this section shall be carried out by adjudication officers.

(5) Except in prescribed circumstances, where a claim for a disability living allowance in respect of a person already awarded such an allowance on an appeal is made or treated as made during the period for which he has been awarded the allowance, it shall be treated as an application for a review under this section.

(6) Subsections (1), (2) and (4) of section 100A above shall apply—

(a) to a decision on a review under this section; and

(b) to a refusal to review a decision such as is mentioned in subsection (1) above, as they apply to a decision of an adjudication officer under section 99 above.

(7) The person whose claim was the subject of the appeal the decision on which has been reviewed under this section shall be given such notification as may be prescribed—

(a) of the decision on the review; and

(b) of his right to a further review under section IOOA(1) above.

(8) Section IOOA(9) above and section IOOC(1) to (5) above shall apply in relation to a review under this section as they apply to a review under section 100A above.

(9) Subsections (1ZA), (3A) and (5) of section 104 above shall apply in relation to a review under this section as they apply to a review under that section but as if—

(a) in subsection (1ZA), “(1)(c)” were substituted for “(1)(bb)”;

(b) in subsection (3A), “(3)” were substituted for “(2)”;

(c) subsection (5)(a) were omitted.”.

10. In section 115(2), after “social security appeal tribunal,” insert “a disability appeal tribunal,”.

11. In section 115A(2), after paragraph (d) insert the following paragraph—

“(dd) a disability appeal tribunal;”.

12. In section 115B(2), after paragraph (c) insert the following paragraph—

“(cc) a disability appeal tribunal;”.

13. After section 115B insert the following sections—

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“References of claims relating to attendance allowance and disability living allowance to medical practitioners and Disability Living Allowance Advisory Board.

115C.—(1) Before a claim for an attendance allowance or a disability living allowance or any question relating to such an allowance is submitted to an adjudication officer under section 98 above the Department may refer the person in respect of whom the claim is made or the question is raised to a medical practitioner for such examination and report as appears to the Department to be necessary—

- (a) for the purpose of providing the adjudication officer with information for use in determining the claim or question; or
- (b) for the purpose of general monitoring of claims for attendance allowances and disability living allowances.

(2) An adjudication officer may refer—

- (a) a person in respect of whom such a claim is made or such a question is raised;
- (b) a person who has applied or is treated as having applied for a review under section 100A or 104A above,

to a medical practitioner for such examination and report as appears to the adjudication officer to be needed to enable him to reach a decision on the claim or question or the matter under review.

(3) The Department may direct adjudication officers to refer for advice to a medical practitioner who is an officer of the Department any case falling within a specified class of cases relating to attendance allowance or disability living allowance, and an adjudication officer may refer for advice any case relating to attendance allowance or disability living allowance to such a medical practitioner without such a direction.

(4) A medical practitioner who is an officer of the Department and to whom a case or question relating to an attendance allowance or disability living allowance is referred under section 115A above or subsection (3) above may refer the case or question to the Disability Living Allowance Advisory Board for advice.

(5) Such a medical practitioner may obtain information about such a case or question from another medical practitioner.

(6) Where—

- (a) the Department has exercised the power conferred on it by subsection (1) above or an adjudication officer has exercised the power conferred on him by subsection (2) above; and
- (b) the medical practitioner requests the person referred to him to attend for or submit himself to medical examination; but
- (c) he fails without good cause to do so,

the adjudication officer shall decide the claim or question or matter under review against him.

Medical examination etc. in relation to appeals to disability appeal tribunals.

115D.—(1) Where an appeal has been brought under section IOOD(1)(a) above, a person who may be nominated as chairman of a disability appeal tribunal may, if prescribed conditions are satisfied, refer the claimant to a medical practitioner for such examination and report as appears to him to be necessary for the purpose of providing a disability appeal tribunal with information for use in determining the appeal.

(2) At a hearing before a disability appeal tribunal, except in prescribed circumstances, the tribunal—

- (a) may not carry out a physical examination of the claimant; and
- (b) may not require the claimant to undergo any physical test for the purpose of determining whether he satisfies the condition mentioned in section 37ZC(1)(a) above.”.

Disability appeal tribunals

14. On the commencement of this paragraph, and by virtue of its operation—

- (a) the President of social security appeal tribunals and medical appeal tribunals shall become President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
- (b) each full-time chairman of social security appeal tribunals and medical appeal tribunals shall become full-time chairman of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals.

15. For paragraph 1A(1) of Schedule 10 and the heading immediately preceding it substitute the following—

“The President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals and full-time chairmen

1A.—(1) The Lord Chancellor may appoint for Northern Ireland—

- (a) a President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals; and
- (b) full-time chairmen of such tribunals.”.

16. After that Schedule insert the following Schedule—

“SCHEDULE IOA

DISABILITY APPEAL TRIBUNALS

1. A disability appeal tribunal shall consist of a chairman and two other persons.
2. Section 97(2C) to (2E) of this Act shall have effect in relation to the chairman of a disability appeal tribunal as they have effect in relation to the chairman of a social security appeal tribunal.
3. The President shall constitute for the whole of Northern Ireland, to act for such areas as he thinks fit and be composed of such persons as he thinks fit to appoint, panels of persons to act as members of disability appeal tribunals.
4. There shall be two panels for each area.
5. One panel shall be composed of medical practitioners.
6. The other shall be composed of persons who are experienced in dealing with the needs of disabled persons—
 - (a) in a professional or voluntary capacity; or
 - (b) because they are themselves disabled,but may not include medical practitioners.

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7. In considering the appointment of members of the panels the President shall have regard to the desirability of appointing disabled persons.

8. Paragraph 1(2A) and (6) of Schedule 10 above have effect in relation to panels constituted under this Schedule as they have effect in relation to the panels mentioned in section 97(2A) of this Act.

9. Of the members of a tribunal other than the chairman one shall be drawn from the panel mentioned in paragraph 5 above.

10. The other shall be drawn from the panel mentioned in paragraph 6 above.

11. Paragraphs 1A(10) and 1B to 3 of Schedule 10 above apply to disability appeal tribunals as they apply to social security appeal tribunals.

12. In summoning members of a panel to serve on a tribunal, the clerk to the tribunal shall have regard to the desirability of at least one of the members of the tribunal being a disabled person.

13. If practicable, at least one of the members of the tribunal shall be of the same sex as the claimant.”.

17. In paragraph 7A of Schedule 13 (procedure regulations), after “social security appeal tribunal” insert “, a disability appeal tribunal”.

Financial arrangements

18. In section 129(2), after paragraph (c) insert the following paragraph—

“(ca) a disability living allowance;”.

Making of claim condition of entitlement

19. In section 154A(3), for the words from “for an attendance” to “of another” there shall be substituted the words “on behalf of another for an attendance allowance by virtue of section 35(2B) above or for a disability living allowance by virtue of section 37ZB(5) or 37ZC(12) above”.

Definitions

20. In Schedule 17—

(a) insert at the appropriate point the following definition—

“The Disability Living Allowance Advisory Board”	“The Disability Living Allowance Advisory Board for Northern Ireland.”.
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(b) in the definition of “President” for “and medical appeal tribunals” substitute “, medical appeal tribunals and disability appeal tribunals”.

SCHEDULE 2

Article 6(2).

DISABILITY LIVING ALLOWANCE AND ATTENDANCE ALLOWANCE: AMENDMENTS

The Vehicles (Excise) Act (Northern Ireland) 1972 (c. 10)

1. In section 7(2) (exemption from duty of vehicles used by disabled persons), for “mobility allowance or”—

- (a) in the first place where it occurs, substitute “disability living allowance by virtue of entitlement to the mobility component at the higher rate or”; and
- (b) in the second place, substitute “disability living allowance by virtue of such entitlement or of”.

The principal Act

2.—(1) In section 35(2B)(b) (which relates to attendance allowance for the terminally ill) for “specified in a certificate issued by virtue of paragraph (a) above” substitute “for which he is entitled to attendance allowance”.

(2) For subsection (3) (weekly rate of attendance allowance) of that section substitute the following subsection—

“(3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in relation thereto in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (2)(b) above he has satisfied or is likely to satisfy both the conditions mentioned in subsection (1) (a) above and subsection (1)(b) above, and shall be the lower rate in any other case.”.

(3) Insert the words “or is treated as making” after “makes” in subsections (4) and (4A) (which relate to attendance allowance for any period preceding the date of the claim for it).

3. In section 37(2) (invalid care allowance) after “attendance allowance” insert “or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate”.

4. In section 154D(4) (restrictions on entitlement to benefit in certain cases of error), in the definition of “adjudicating authority”—

- (a) in paragraph (a), after “a social security appeal tribunal” insert “, a disability appeal tribunal”; and
- (b) in paragraph (b), after “the Supplementary Benefits Commission for Northern Ireland,” insert “the Attendance Allowance Board,”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

5. In Part II of Schedule 1 (bodies of which all members are disqualified), insert at the appropriate place in alphabetical order—

“The Disability Living Allowance Advisory Board for Northern Ireland”.

6. In Part III (other disqualifying offices) of that Schedule—

- (a) in the entry for a full-time chairman of Social Security Appeal Tribunals and Medical Appeal Tribunals for Northern Ireland for “and Medical Appeal Tribunals” substitute “, Medical Appeal Tribunals and Disability Appeal Tribunals”;
- (b) in the entry for the President of Social Security Appeal Tribunals and Medical Appeal Tribunals for Northern Ireland for “and Medical Appeal Tribunals” substitute “, Medical Appeal Tribunals and Disability Appeal Tribunals”.

The Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (NI 11)

7. In Article 10(1) (mobility allowances for certain persons eligible for invalid carriages), for the words from “section 37A” to the end substitute “section 37ZC of the principal Act (which relates to the mobility component of a disability living allowance) to satisfy the condition mentioned in subsection (1)(a) of that section and to fall within paragraphs (a) and (b) of subsection (9) by virtue

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of having satisfied or being likely to satisfy that condition throughout both the periods mentioned in those paragraphs.”.

The Social Security Act 1980 (c. 30)

8. In paragraph 12 of Part 11 of Schedule 3 (regulations not requiring prior submission to the Social Security Advisory Committee)—

- (a) sub-paragraph (3) (regulations relating to matters referred to the Attendance Allowance Board), as substituted by paragraph 10 of Schedule 2 to the Disability Living Allowance and Disability Working Allowance Act 1991, shall cease to have effect;
- (b) in sub-paragraph (4), after “principal Act” insert “or the Social Security (Northern Ireland) Act 1975”.

The Social Security (Northern Ireland) Order 1980 (NI 8)

9. In Article 12 (proof of decisions of statutory authorities), at the end of paragraph (2) add the following—

“and

- (cc) a disability appeal tribunal appointed under Schedule 10A to the principal Act”.

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

10. In Article 129C(2)(a) (payments in respect of applicants for exemption from wearing seat belts), after head (i) insert the following head—

- “(iA) a disability living allowance under section 37ZA of that Act;”.

The 1986 Order

11. Insert the words “(other than attendance allowance and disability living allowance)”—

- (a) in Article 53(3) (adjudication as to income-related benefits), after “benefit under that Act”; and
- (b) in Schedule 7, at the end of paragraph 4(1) (adjudication as to certain former benefits).

12. In Schedule 6 (Christmas bonus for pensioners), in paragraph 1(2), after paragraph (a) of the definition of “attendance allowance” insert the following paragraph—

- “(aa) a disability living allowance under that Act;”.

The Social Security (Northern Ireland) Order 1989 (NI 13)

13. In Part I of Schedule 2 (persons employed in social security administration or adjudication)—

- (a) in the entry relating to adjudicating bodies, after “a social security appeal tribunal;” insert—

“(aa) a disability appeal tribunal;”;

- (b) after the entry relating to adjudicating bodies insert the following entry—

“The Disability Living Allowance Advisory Board for Northern Ireland

A member of the Disability Living Allowance Advisory Board for Northern Ireland.

An officer or servant of that Board.”

- ; and
- (c) in the entry relating to former statutory bodies and officers after “National Assistance Board for Northern Ireland” insert—
- “(c) the former Attendance Allowance Board for Northern Ireland.”.

SCHEDULE 3

Article 9(2).

DISABILITY WORKING ALLOWANCE: AMENDMENTS

PART I

AMENDMENTS OF 1986 ORDER

1. The 1986 Order shall be amended as follows.

Administration

2. After Article 52(2)(d) insert the following sub-paragraph—
- “(dd) disability working allowance;”.

Adjudication

- 3.—(1) In Article 53, after paragraph (3) insert the following paragraph—
- “(3A) Subject to paragraphs (9) and (10), the following provisions of the principal Act shall have effect for the purposes of disability working allowance as they have effect for the purposes of attendance allowance and disability living allowance—
- (a) those mentioned in paragraph (3);
- (b) section 104A; and
- (c) sections 115A to 115D.”.
- (2) In paragraph (4) of that Article—
- (a) after “virtue of paragraph (3)” insert “or (3A)”; and
- (b) at the end add “or in relation to disability working allowance”.
- (3) At the end of that Article add the following paragraphs—
- “(9) In their application to disability working allowance the provisions of the principal Act mentioned in paragraph (3A) shall have effect as if—
- (a) in sections 100A(2)(b) and 104A(1)(b), for “any relevant” there were substituted “any prescribed”;
- (b) sections 100A(2)(c), (3), (4) and (11), 100C(2) to (5), 100D(4) to (6), 104A(1)(c) and (d), (2) and (5) and 115C(4) were omitted;
- (c) in section 104A the following subsection were substituted for subsection (9)—
- (9) Subsections (3A) and (5) of section 104 above shall apply in relation to a review under this section as they apply to a review under that section but as if—
- (a) in subsection (3A), “(3)” were substituted for “(2)”; and

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- (b) subsection (5)(a) were omitted.”;
- (d) the following subsection were substituted for section 115C(3)—
 - “(3) An adjudication officer may refer for advice any case relating to attendance allowance or disability living allowance to a medical practitioner who is an officer of the Department.”;
- (e) the following subsection were substituted for section 115C(5)—
 - “(5) A medical practitioner who is an officer of the Department and to whom a question relating to attendance allowance or disability living allowance is referred under section 115A above may obtain information about it from another medical practitioner.”.
- (10) In their application to disability working allowance sections 100A(1) and (2)(b) and 104A(1)(b) of the principal Act shall have effect subject to Article 21(6F).

Overpayments

- 4. After Article 54(10)(d) insert the following sub-paragraph—
 - “(e) disability working allowance.”.

Reciprocal arrangements

- 5. In Article 66(4), after “family credit” insert “, disability working allowance”.

Crown employment

- 6. In Article 79(3), after “family credit” insert “and disability working allowance”.

Financial provision

- 7. In Article 82(7), after “provision relating to” insert “disability working allowance.”.

PART II

OTHER AMENDMENTS

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

- 8. In Article 129C(2)(b) (payments in respect of applicants for exemption from wearing seat belts) for “or family credit” substitute “, family credit or disability working allowance”.

Education Reform (Northern Ireland) Order 1989 (NI 20)

- 9. In Article 131(3)(b) (charges and remissions policies), for “or family credit” substitute “, family credit or disability working allowance”.

SCHEDULE 4

Article 12.

REPEALS

Chapter or Number	Title	Extent of repeal
1975 c. 15.	The Social Security (Northern Ireland Act 1975.	<p>Section 34(1)(cc).</p> <p>In section 35—</p> <p>in subsection (2), the words from “that specified” to “as being”;</p> <p>in subsection (2B)(a)(i), the words “the date determined under section 105 or 106 below as” ;</p> <p>subsection (4)(b) and the word “and” immediately preceding it;</p> <p>subsection (5); and</p> <p>in subsection (6)(b), the words from “or to young” to the end.</p> <p>Section 37A.</p> <p>In section 101(5A), the words “of a social security appeal tribunal”.</p> <p>Sections 105 and 106.</p> <p>Section 115A(2)(f).</p> <p>Section 115B(2)(e).</p> <p>Section 129(2)(cc).</p> <p>Section 132.</p> <p>In section 154D(4), in paragraph (a) of the definition of “adjudicating authority”, the words “the Attendance Allowance Board.”.</p> <p>In Schedule 4, in Part III, paragraph 3A.</p> <p>Schedule 11.</p>
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II, the entry relating to the Attendance Allowance Board for Northern Ireland.
1975 NI 15.	The Social Security Pensions (Northern Ireland) Order 1975.	Article 24.

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Chapter or Number	Title	Extent of repeal
		In Schedule 5, paragraphs 29 and 32.
1979 NI 5.	The Social Security (Northern Ireland) Order 1979	Article 3(4). Article 4.
1980 c. 30.	The Social Security Act 1980.	In Schedule 3, in Part 11, in paragraph 12, subparagraph (3).
1981 NI 1.	The Road Traffic (Northern Ireland) Order 1981.	Article 129C(2)(a)(ii).
1986 NI 18.	The Social Security (Northern Ireland) Order 1986.	Articles 72 and 73. In Schedule 5, paragraph 10.
1988 NI 2.	The Social Security (Northern Ireland) Order 1988.	In Article 3(2), in sub-paragraph (a), the words from “by” to “that Act”, in sub-paragraph (b), the words “by the Board or by such a delegate”, in sub-paragraph (c), the words from “by the Board” to “principal Act” and sub-paragraph (d).
1989 NI 13.	The Social Security (Northern Ireland) Order 1989.	Article 10. In Schedule 2, in Part I, paragraph (b) of the entry relating to adjudicating bodies. In Schedule 3, paragraph 8. In Schedule 7, paragraph 13.
1990 NI 15.	The Social Security (Northern Ireland) Order 1990.	Article 3(3), (4) and (5).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of the Disability Living Allowance and Disability Working Allowance Act 1991.

It amends the law relating to social security so as to introduce disability living allowance and disability working allowance.

Article 3 provides for disability living allowance, consisting of a care component and a mobility component. Article 4 restricts attendance allowance to people over 65 years who are not entitled to

the care component of disability allowance, dissolves the Attendance Allowance Board and abolishes mobility allowance. Article 5 establishes a Disability Living Allowance Advisory Board. Article 6 provides for the management of disability living allowance and attendance allowance, including adjudication arrangements with a right of appeal to a Disability Appeal Tribunal.

Article 8 introduces disability working allowance as an income-related benefit. Articles 9 to 11 make supplementary provision in respect of adjudication, family credit and other benefits.