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STATUTORY RULES OF NORTHERN IRELAND

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**1992 No. 38**

**SOCIAL SECURITY**

**The Social Security (Introduction of Disability Living Allowance) Regulations (Northern Ireland) 1992**

*Made* - - - - *29th January 1992*

*Coming into operation* *3rd February 1992*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by section 37ZD of the Social Security (Northern Ireland) Act 1975(1), Article 52(1) (g) and (j) of the Social Security (Northern Ireland) Order 1986(2) and Articles 7 and 13 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991(3) and of all other powers enabling it in that behalf, hereby makes the following regulations:

**Part I**

**Introduction**

**Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Social Security (Introduction of Disability Living Allowance) Regulations (Northern Ireland) 1992 and shall come into operation on 3rd February 1992.

(2) In these regulations—

“the Act” means the Social Security (Northern Ireland) Act 1975(4);

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1987(5);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(6);

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(1) 1975 c. 15; section 37ZD was inserted by Article 3(2) of the [Disability Living Allowance and Disability Working Allowance \(Northern Ireland\) Order 1991](#) (S. I. 1991/1712 (N. I. 17))

(2) S. I. 1986/1888 (N. I. 18)

(3) S. I. 1991/1712 (N. I. 17)

(4) 1975 c. 15

(5) S. R. 1987 No. 82; the relevant amending regulations are S. R. 1988 No. 369, S. R. 1989 No. 397 and S. R. 1991 No. 107. See also S. R. 1977 No. 242

(6) S. R. 1987 No. 465; to which there are amendments not relevant to these regulations

“adjudicating authority” means, as the case may be, an adjudication officer appointed under section 97(1)(7), a social security appeal tribunal constituted under section 97(2) to (2E)(7), a disability appeal tribunal constituted under Schedule 10A(8) or the Chief or any other Social Security Commissioner appointed in accordance with section 97(3)(9) and includes a Tribunal of 2 or 3 such Commissioners constituted in accordance with section 116;

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

“care component” means the care component of a disability living allowance;

“mobility component” means the mobility component of a disability living allowance;

“second tier adjudication” has the meaning given to it in regulation 15.

(3) Unless the context otherwise requires, any reference in these regulations to—

- (a) a numbered section is a reference to the section of the Act bearing that number;
- (b) a numbered regulation is a reference to the regulation bearing that number in these regulations, and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that regulation bearing that number.

(4) Any sum payable in accordance with these regulations is payable subject to the provisions of Chapters II and VI of Part II of the Act, and of any regulations made thereunder.

(5) The Interpretation Act 1978(10) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

## Part II

### Attendance Allowance

#### Termination or cancellation of awards of attendance allowance

2.—(1) Any award of attendance allowance made to a person to whom paragraph (2) applies for a period—

- (a) part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992; or
- (b) the whole of which falls after 5th April 1992, shall be cancelled.

(2) This paragraph applies to a person who has not attained the age of 65 on 6th April 1992.

#### Award of disability living allowance

3.—(1) Subject to paragraphs (3) to (10), a person whose award of attendance allowance is terminated in accordance with regulation 2 shall be treated as having been awarded the care component for a period commencing on 6th April 1992 and ending on the day on which the period of the award of attendance allowance would have ended but for regulation 2.

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(7) Section 97(1) to (2E) was substituted by paragraph 1 of Schedule 1 to the [Social Security Adjudications \(Northern Ireland\) Order 1983 \(S. I. 1983/1524 \(N. I. 17\)\)](#); section 97(1) was amended by paragraph 3(1) of Schedule 6 to the [Social Security \(Northern Ireland\) Order 1990 \(S. I. 1990/1511 \(N. I. 15\)\)](#); and section 97(2A) and (2B) was substituted by Article 10(a) of the [Health and Social Security \(Northern Ireland\) Order 1984 \(S. I. 1984/1158 \(N. I. 8\)\)](#)

(7) Section 97(1) to (2E) was substituted by paragraph 1 of Schedule 1 to the [Social Security Adjudications \(Northern Ireland\) Order 1983 \(S. I. 1983/1524 \(N. I. 17\)\)](#); section 97(1) was amended by paragraph 3(1) of Schedule 6 to the [Social Security \(Northern Ireland\) Order 1990 \(S. I. 1990/1511 \(N. I. 15\)\)](#); and section 97(2A) and (2B) was substituted by Article 10(a) of the [Health and Social Security \(Northern Ireland\) Order 1984 \(S. I. 1984/1158 \(N. I. 8\)\)](#)

(8) Schedule 10A was inserted by paragraph 16 of Schedule 1 to the [Disability Living Allowance and Disability Working Allowance \(Northern Ireland\) Order 1991 \(S. I. 1991/1712 \(N. I. 17\)\)](#)

(9) Section 97(3) was amended by section 9(2) of the Social Security Act 1979 (c. 18)

(10) 1978 c. 30

(2) Subject to paragraphs (3) to (10) and regulation 4, a person whose award of attendance allowance is cancelled in accordance with regulation 2 shall be treated as having been awarded the care component for a period commencing on whichever of the following dates is the latest, namely—

- (a) 6th April 1992;
- (b) the date which precedes by 3 months the date on which the award of attendance allowance would have commenced but for regulation 2; or
- (c) where on 6th April 1992 the person has an award of the care component by virtue of paragraph (1), the day following the day on which that award ends,

and ending on the date on which the award of attendance allowance would have ended but for regulation 2.

(3) Where the award of attendance allowance which has terminated or been cancelled in accordance with regulation 2 was made to a person in respect of a child who, on the date on which the award is terminated or cancelled, has not attained the age of 16 years, then that child, and not the person to whom the award was made, shall be treated for the purposes of paragraph (1) or (2) as having been awarded the care component.

(4) The weekly rate of disability living allowance payable by virtue of this regulation shall be—

- (a) in the case of a person to whom attendance allowance was payable, immediately before the award was terminated in accordance with regulation 2, at the higher rate specified in paragraph 1 of Part III of Schedule 4 to the Act<sup>(11)</sup>, the highest of the three weekly rates of the care component prescribed in accordance with section 37ZB(3);
- (b) in the case of a person to whom attendance allowance was payable, immediately before the award of attendance allowance was terminated in accordance with regulation 2, at the lower rate specified in paragraph 1 of Part III of Schedule 4 to the Act, the middle of the three weekly rates of the care component prescribed in accordance with section 37ZB(3); or
- (c) at the highest of the three weekly rates of the care component where the award which was cancelled in accordance with regulation 2 was to be payable at the higher rate of attendance allowance and at the middle of those rates where the award which was cancelled was to be payable at the lower rate.

(5) Where, immediately before 6th April 1992, a person had an award of attendance allowance but no benefit was payable under that award by virtue of regulations made under any provision mentioned in paragraph (6), benefit under the award of disability living allowance treated as made by virtue of this regulation shall likewise not be payable; but, subject to paragraphs (6) to (10), for any parts of the period during which those regulations do not apply in his case, disability living allowance shall be payable at—

- (a) the highest of the three weekly rates prescribed under section 37ZB(3) if attendance allowance would, immediately before 6th April 1992, have been payable at the higher rate but for those regulations; or
- (b) the middle of those weekly rates if attendance allowance would, immediately before 6th April 1992, have been payable at the lower rate but for those regulations.

(6) The provisions referred to in paragraph (5) are—

- (a) section 35(6)<sup>(12)</sup> (persons for whom accommodation is provided under certain enactments);

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<sup>(11)</sup> See Article 3(2) of *S. R. 1991 No. 77*

<sup>(12)</sup> Section 35(6) was amended by Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(b) section 82(5) (persons abroad or undergoing imprisonment or detention in legal custody);  
or

(c) section 85(1)(13) (overlapping benefits).

(7) For the purposes of determining the weekly rate of disability living allowance payable to a person who has not attained the age of 16 such as is referred to in paragraph (3), paragraphs (4) and (5) shall apply as if he were the person to whom the attendance allowance was payable immediately before the award was terminated, or would have been payable if the award had not been cancelled, in accordance with regulation 2.

(8) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only for as long as the person to whom the award is treated as made continues to satisfy the conditions as to residence and presence in Northern Ireland prescribed under section 37ZA(6) and—

(a) in the case of a person to whom the care component is payable at the highest of the three weekly rates, also continues to satisfy the conditions mentioned in section 37ZB(1)(b) and (c); or

(b) in the case of a person to whom the care component is payable at the middle of the three weekly rates, also continues to satisfy one or other of the conditions mentioned in section 37ZB(1)(b) or (c).

(9) Subject to paragraph (10), paragraph (8) shall apply to a person who—

(a) before 6th April 1992, was entitled to an attendance allowance by virtue of section 35(1)(b) as enacted(14); and

(b) is awarded disability living allowance in accordance with this regulation,

as if section 37ZB(1)(c)(ii) were modified to read—

“(ii) he requires continual supervision in order to avoid substantial danger to himself or others.”.

(10) Paragraph (9) shall not apply where the award of disability living allowance is reviewed in accordance with the provisions in Part III of the Act.

#### **Claims for, and applications for reviews of decisions relating to, attendance allowance**

4.—(1) Subject to paragraph (4), the replacement of attendance allowance by disability living allowance shall be disregarded in a case to which paragraph (2) or (3) applies.

(2) This paragraph applies in a case where a person—

(a) is under the age of 65 on 6th April 1992;

(b) has an award of attendance allowance which expires after 5th April 1992; and

(c) makes a claim for attendance allowance for a period commencing immediately after that award expires.

(3) This paragraph applies in a case where—

(a) a person is under the age of 65 on 6th April 1992;

(b) that person has an award of attendance allowance or is the subject of a decision given on a claim or an application for a review either not to award benefit or that the conditions of entitlement to attendance allowance were not satisfied; and

(c) an application for a review is made either—

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(13) Section 85(1) was amended by paragraph 29 of Schedule 4 to the [Child Benefit \(Northern Ireland\) Order 1975 \(S. I. 1975/1504 \(N. I. 16\)\)](#)

(14) Section 35(1)(b) was substituted by Article 3(1) of the [Social Security \(Northern Ireland\) Order 1988 \(S. I. 1988/594 \(N. I. 2\)\)](#)

- (i) to an adjudication officer in accordance with section 104(2)(15) for the decision to award or, as the case may be, not to award benefit to be reviewed, or
- (ii) to the Board in accordance with regulation 38(2) of the Adjudication Regulations for a decision of theirs given in accordance with section 105(3)(16) or 106(1)(17) (matters for determination by the Board), to be reviewed.

(4) Any award of attendance allowance made in accordance with this regulation shall be subject to the provisions of regulations 2 and 3.

### **Claims for the care component treated as having been made**

5.—(1) Paragraph (2) applies where—

- (a) a person who—
  - (i) does not have an award of attendance allowance, or
  - (ii) does have an award of attendance allowance, but that award is due to expire before 6th April 1992,

makes a claim for attendance allowance, or an application in writing is made in accordance with section 104(2) for the decision to award or, as the case may be, not to award attendance allowance to him to be reviewed;

- (b) the claim or application for a review is made after 2nd February 1992, or is made before 3rd February 1992 but has not been determined by that date; and
- (c) at the time the claim or, as the case may be, the application for a review is determined, the person to whom the claim or application relates has not made a claim for disability living allowance.

(2) Where the adjudication officer who is determining the claim or application for a review such as is mentioned in paragraph (1) is satisfied that—

- (a) the person does not satisfy the conditions of entitlement to attendance allowance; but
- (b) solely on the evidence before him, and apart from the requirement that the person makes a claim for disability living allowance in the manner and within the time prescribed, the person would, as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or highest, rate of that component,

a claim for the care component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a person has before 3rd February 1992 applied to the Board for a decision given under section 105(3) or 106(1) to be reviewed, and the question arising thereon has not been determined by 3rd February 1992, then—

- (a) if the Department is notified that the question is determined against that person; and
- (b) at the time he is notified, that person has not made a claim for disability living allowance; but
- (c) the Department is satisfied solely on the evidence before it, and apart from any requirement that he makes a claim for disability living allowance in the manner and within the time

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(15) See Article 3(3) of the Social Security Adjudications (Northern Ireland) Order 1983

(16) Section 105(3) was amended by Article 3(3) of the [Social Security \(Northern Ireland\) Order 1990 \(S. I. 1990/1511 \(N. I. 15\)\)](#)

(17) Section 106(1) was amended by paragraph 10 of Schedule 5 to the Social Security (Northern Ireland) Order 1986, paragraph 13 of Schedule 7 to the [Social Security \(Northern Ireland\) Order 1989 \(S. I. 1989/1342 \(N. I. 13\)\)](#) and Article 3(4) of the Social Security (Northern Ireland) Order 1990

prescribed, that the person may nonetheless satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or highest rate, of that component,

a claim for the care component only shall be treated as having been made on 3rd February 1992 and the Department shall refer that claim to an adjudication officer for his determination.

### **Termination of awards of attendance allowance where beneficiary is aged 65 or over**

6.—(1) This regulation applies where a person—

- (a) has attained the age of 65 but not the age of 66, on 6th April 1992;
- (b) makes a claim for the mobility component by virtue of Part IV or V of these regulations or of any regulation made under section 37ZD (persons 65 or over); and
- (c) is entitled to attendance allowance on the day on which the claim is made.

(2) Where in connection with a claim such as is mentioned in paragraph (1)(b), an adjudicating authority makes an award of the mobility component, the person's award of attendance allowance shall, if it has not already been terminated, terminate as from the day which immediately precedes the day on which the period of the award of the mobility component commences.

(3) Where a person whose award of attendance allowance has been terminated in accordance with paragraph (2) also has a further award of attendance allowance due to commence on the day following the day on which the first award would have ended but for paragraph (2), the further award shall be cancelled.

(4) A person whose award of attendance allowance has been terminated in accordance with paragraph (2) or cancelled in accordance with paragraph (3) shall be treated as having been awarded the care component for the period specified in paragraph (5).

(5) The period referred to in paragraph (4) commences on the day immediately following the day on which the award of attendance allowance is terminated in accordance with paragraph (2), and the award ends—

- (a) except in a case to which sub-paragraph (b) applies, on the day on which the award of attendance allowance mentioned in paragraph (1)(c) would have ended but for paragraph (2); or
- (b) where the person also had an award of attendance allowance to which paragraph (3) applies, on the day on which that award of attendance allowance would have ended but for paragraph (3).

(6) Regulation 3(4), (5), (6), (8), (9) and (10) shall apply to awards of the care component having effect under this regulation as they apply to awards having effect under that regulation but as if references to 6th April 1992 were references to the date on which the period of the award of the care component commenced.

## **Part III**

### **Mobility Allowance**

#### **Termination or cancellation of awards of mobility allowance**

7. Any award of mobility allowance made to a person for a period—

- (a) part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992; or
- (b) the whole of which falls after 5th April 1992, shall be cancelled.

### **Disability living allowance to replace mobility allowance**

8.—(1) Subject to paragraph (4), a person whose award of mobility allowance terminates in accordance with regulation 7(a) shall be treated as having been awarded the mobility component—

- (a) for a period commencing on 6th April 1992 and ending on the day on which the period of the award of mobility allowance would have ended but for regulation 7(a); or
- (b) for life, where the award of mobility allowance was for, or had effect as if for, a period ending on the day before the day on which the person would have attained the age of 80.

(2) Subject to paragraph (4), a person whose award of mobility allowance is cancelled in accordance with regulation 7(b) shall be treated as having been awarded the mobility component—

- (a) except where sub-paragraph (b) applies, for a period commencing on the date on which the award of mobility allowance would have commenced, and ending on the date on which that award would have ended, but for regulation 7(b); or
- (b) where the award of mobility allowance was for a period ending with the day before the day on which the person would have attained the age of 80, for life, commencing on the date on which the award of mobility allowance would have commenced but for regulation 7(b).

(3) The weekly rate of disability living allowance payable by virtue of this regulation shall be the higher of the two weekly rates of the mobility component prescribed under section 37ZC(10).

(4) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only for as long as the person to whom the award is treated as made continues—

- (a) to satisfy the conditions as to residence and presence in Northern Ireland prescribed under section 37ZA(6); and
- (b) to satisfy, or to be deemed in accordance with Article 10(1) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(18) (mobility component for certain persons eligible for invalid carriages) to satisfy, one of the conditions mentioned in section 37ZC(1)(a) to (c).

### **Claims for, and applications for reviews of decisions relating to, mobility allowance**

9.—(1) The replacement of mobility allowance by disability living allowance shall, except to the extent specified in paragraphs (4) and (5), be disregarded in a case to which paragraph (2) or (3) applies.

(2) This paragraph applies in a case where a person—

- (a) is under the age of 65 on 6th April 1992;
- (b) has an award of mobility allowance which expires after 5th April 1992; and
- (c) makes a claim for mobility allowance for a period commencing immediately after that award expires.

(3) This paragraph applies in a case where—

- (a) a person is under the age of 65 on 6th April 1992;
- (b) that person has an award of mobility allowance or is the subject of a decision given on a claim or application for a review not to award benefit; and
- (c) an application for a review is made to an adjudication officer in accordance with section 104(2) for the decision to award or, as the case may be, not to award benefit to be reviewed.

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(18) S. I. 1977/610 (N. I. 11); Article 10(1) was amended by paragraph 7 of Schedule 2 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(4) Any award of mobility allowance made in accordance with this regulation shall be subject to the provisions of regulations 7 and 8.

(5) In determining under this regulation, a person's entitlement to mobility allowance for any period after 5th April 1992—

- (a) the conditions as to residence and presence in Northern Ireland prescribed under section 37ZA(6) (disability living allowance) and not those prescribed under section 37A(1)(19) (mobility allowance) shall apply; and
- (b) for the reference to 12 months in section 37A(2)(a)(19) there shall be substituted a reference to 9 months.

### **Claims for the mobility component treated as having been made**

**10.**—(1) Paragraph (2) applies where—

- (a) a person who—
  - (i) does not have an award of mobility allowance, or
  - (ii) does have an award of mobility allowance, but that award is due to expire before 6th April 1992,
 makes a claim for mobility allowance or an application in writing is made in accordance with section 104(2) for a decision on a claim for mobility allowance relating to him to be reviewed, or a question has been referred to a medical board or a case to a medical appeal tribunal in accordance with Section B of Part IV of the Adjudication Regulations;
- (b) the claim, application or reference is made after 2nd February 1992, or is made before 3rd February 1992 but has not been determined by that date; and
- (c) at the time the claim, application or reference is determined, the person to whom it relates has not made a claim for disability living allowance.

(2) Where an adjudication officer is determining a claim or application such as is mentioned in paragraph (1) and is satisfied that—

- (a) the person does not satisfy the conditions of entitlement to mobility allowance; but
- (b) solely on the evidence before him, and apart from the requirement that the person makes a claim for disability living allowance in the manner and within the time prescribed, the person would, as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy those conditions of entitlement to the mobility component which qualify him for—
  - (i) the lower, but not the higher rate of the mobility component, or
  - (ii) the higher rate of that component but only by virtue of being a person who falls within section 37ZC(3) (severe mental impairment and severe behavioural problems),
 a claim for the mobility component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a claim, application or reference is being determined by a medical board or a medical appeal tribunal and they are satisfied that—

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(19) Section 37A was inserted by Article 24(1) of the [Social Security Pensions \(Northern Ireland\) Order 1975 \(S. I. 1975/1503 \(N. I. 15\)\)](#); and subsection (2) was amended by Article 72(1) of the Social Security (Northern Ireland) Order 1986. The section ceases to have effect from 6th April 1992 by virtue of Article 4(3) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(19) Section 37A was inserted by Article 24(1) of the [Social Security Pensions \(Northern Ireland\) Order 1975 \(S. I. 1975/1503 \(N. I. 15\)\)](#); and subsection (2) was amended by Article 72(1) of the Social Security (Northern Ireland) Order 1986. The section ceases to have effect from 6th April 1992 by virtue of Article 4(3) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991



- (a) the question before them be determined against the person claiming mobility allowance; but
- (b) solely on the evidence before them, the person may, as from 6th April 1992, or from such later date as they may in any particular case determine, satisfy the conditions of entitlement to the mobility component specified in section 37ZC(1)(c) or (d),

they shall refer the case to an adjudication officer.

(4) Where a case is referred to an adjudication officer in accordance with paragraph (3), a claim for the mobility component shall be treated as having been made on 3rd February 1992, and the adjudication officer shall determine that claim.

## Part IV

### Provisions Common to Parts II and III

#### **Separate awards of attendance allowance and mobility allowance**

11.—(1) Where—

- (a) a person has an award of attendance allowance terminated or cancelled in accordance with Part II of these regulations and an award of mobility allowance terminated or cancelled in accordance with regulation 7; and
- (b) awards of disability living allowance are treated as made in accordance with Parts II and III of these Regulations,

those awards shall be separate awards.

(2) Where a person—

- (a) has an award of attendance allowance or mobility allowance, but not both, for a period commencing before 6th April 1992;
- (b) in accordance with Parts II and III of these regulations is treated, as from 6th April 1992, as having one award of disability living allowance consisting of either the care component or the mobility component;
- (c) claims, or is treated as claiming, disability living allowance but only in respect of the component which is not the subject of the award mentioned in sub-paragraph (b); and
- (d) is awarded disability living allowance for that component on that claim for a period commencing on or after 6th April 1992, but before 5th April 1993,

the award so made shall be in addition to the award of disability living allowance treated as arising under Parts II and III of these regulations.

#### **Backdating of awards of disability living allowance**

12.—(1) This regulation applies where—

- (a) a person claims or is treated as claiming attendance allowance or mobility allowance before 6th April 1992; and
- (b) the decision on the claim—
  - (i) is given after 2nd February 1992, and
  - (ii) was that the person was not entitled to either of those benefits.

(2) Where such a person submits a claim for disability living allowance within 3 months of the date on which the decision on the claim referred to in paragraph (1) was notified to him, any award

of disability living allowance arising from the later claim may, notwithstanding section 37ZE(1), be for a period commencing on such earlier date (but not before 6th April 1992) as the adjudicating authority determining the claim decides that the person satisfied the appropriate conditions of entitlement thereto.

(3) Notwithstanding section 37ZD(1), a person who has attained the age of 65, but not the age of 66, on 6th April 1992, shall be entitled to disability living allowance where, in addition to satisfying the appropriate conditions of entitlement to that allowance, he made a claim for it within 3 months of the date on which he was notified of the decision on the claim for attendance allowance or mobility allowance.

(4) Any award made by virtue of paragraph (3) shall, notwithstanding section 37ZE(1), be for a period commencing on—

- (a) 6th April 1992; or, if later,
- (b) the date on which he first satisfies the appropriate conditions of entitlement to disability living allowance (other than the need to make a claim for it).

(5) In this regulation, in the expression “decision on the claim”—

- (a) “claim” is the claim referred to in paragraph (1)(a); and
- (b) “decision” is the first decision given on that claim by an adjudicating authority after 2nd February 1992.

(6) This regulation applies to an application made under section 104(2) or 106(1) for a review of a determination as it applies to a claim for benefit but as if the application were the claim and the decision were the decision given on that application.

### **Treatment of two awards of disability living allowance**

**13.—**(1) Where a person has two awards of disability living allowance both of which are for periods which commence before 5th April 1993 and expire after 4th April 1993, then those awards shall both terminate immediately before 5th April 1993.

(2) A person whose awards of disability living allowance have been terminated in accordance with paragraph (1) shall be treated, as from 5th April 1993, as having been granted one award of disability living allowance—

- (a) where both the awards were for life, consisting of both components for life, payable at a weekly rate which is the aggregate of the appropriate weekly rate for each of those components;
- (b) where one of the awards was for life and the other was for a fixed period, consisting of one component for life, corresponding to the component which was for life under the terminated award, and the other component for a fixed period ending on the day on which the award for the fixed period would have ended but for its termination under paragraph (1), and payable at a weekly rate which is the aggregate of the appropriate weekly rate for each of the components from 5th April 1993 until the day on which the period of the fixed award ends, and thereafter at a weekly rate which is the appropriate weekly rate for the component awarded for life;
- (c) where both awards were for fixed periods ending on different days, consisting of both components for a period ending on the earlier of those days, payable at a weekly rate which is the aggregate of the appropriate weekly rate for each of those components;
- (d) where both awards were for fixed periods ending on the same day, consisting of both components for a period ending on that day, payable at a weekly rate which is the aggregate of the appropriate weekly rate for each of those components.

(3) In this regulation, the “appropriate weekly rate” in relation to either component of disability living allowance is the rate which corresponds to the rate payable for that component under any award terminated in accordance with paragraph (1).

(4) An award of disability living allowance granted in accordance with this regulation shall continue for the period of the award only for as long as the person to whom the award is treated as having been granted continues to satisfy—

- (a) the conditions as to residence and presence in Northern Ireland prescribed under section 37ZA(6); and
- (b) any other conditions of entitlement appropriate to that award specified in sections 37ZA to 37ZE.

## Reviews

**14.—**(1) Where a person is treated as having been awarded disability living allowance in accordance with regulations 2 to 13 sections 100A(1), (2) and (4) and 104A(1)(20) (reviews of decisions by adjudication officers and on appeal) shall have effect in his case as if the decision there mentioned were the decision which was referable to the award of disability living allowance.

(2) For the purposes of this regulation, a decision is referable to an award of disability living allowance if—

- (a) it was a decision awarding attendance allowance or mobility allowance to a person referred to in paragraph (1) and the decision was terminated or cancelled in accordance with Part II or Part III of these regulations and replaced by the person’s current award of disability living allowance, or was so terminated or cancelled and replaced by an award of disability living allowance which was itself terminated in accordance with regulation 13(1) and replaced by the person’s current award of disability living allowance; or
  - (b) it was a decision awarding disability living allowance to a person referred to in paragraph (1) which was terminated in accordance with regulation 13(1) and replaced by the person’s current award of disability living allowance.
- (3) A decision is also referable to an award of disability living allowance where it was—
- (a) a decision of the Board on a matter reserved for the Board’s determination under section 105(3) and the decision to award attendance allowance mentioned in paragraph (2) (a) was dependant upon the Board’s decision; or
  - (b) a decision of a medical board or a medical appeal tribunal on a medical question and the decision awarding mobility allowance mentioned in paragraph (2)(a) was dependant upon the medical board’s or, as the case may be, the medical appeal tribunal’s decision.

(4) In paragraph (3) “medical board” means 2 or more adjudicating medical practitioners appointed by the Department to act jointly in consideration of the medical question, and “medical question” has the meaning it bore in regulation 53 of the Adjudication Regulations on 3rd February 1992.

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(20) Sections 100A and 104A were inserted by paragraphs 5 and 9 respectively of Schedule i to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

## Part V

### Claims, Payments and Adjudication

#### Second tier adjudication

**15.** For the purposes of this Part of these regulations, “second tier adjudication” means adjudication by an adjudication officer; and for these purposes section 100D(1)(**21**) (appeals following reviews) shall apply to any decision given by an adjudication officer as if it were a decision given by him on a review under section 100A(1) (review of a decision on any ground).

#### Claims for a single component of disability living allowance

**16.**—(1) Where a person—

- (a) had an award of attendance allowance or mobility allowance, but not both, for a period commencing before 6th April 1992; and
- (b) in accordance with the above regulations is treated as from 6th April 1992 as having one award of disability living allowance at the weekly rate applicable in his case to either the care component or the mobility component,

he may submit a claim for a disability living allowance relating solely to that component to which he has no entitlement.

(2) Any such claim made after 4th April 1993 shall be treated as an application for a review under section 100A(1), if made within the period prescribed under that provision, or if not, under section 100A(2), of any award of disability living allowance in force at the time the claim is made.

(3) Subject to paragraph (4), an award of disability living allowance consisting of one component may be made by virtue of this regulation in addition to any award of disability living allowance consisting only of the other component which is treated as having been made to the claimant in accordance with the preceding provisions of these regulations.

(4) An award shall not be made in accordance with paragraph (3) where the period of the award would commence after 4th April 1993.

(5) Where a claim, submitted in accordance with paragraph (1), is received in an office of the Department before 5th April 1993, any award on that claim may, notwithstanding anything in section 37ZE(1)(**22**), commence on a date not earlier than 6th April 1992.

#### Claims in addition

**17.**—(1) This regulation applies in a case where an adjudicating authority in determining a person’s claim for, or application for a review of a decision relating to, disability living allowance is satisfied that the person satisfies the conditions of entitlement to the care component which qualify him for the highest or middle of the three weekly rates prescribed under section 37ZB(3) or to the mobility component which qualify him for the higher of the two weekly rates prescribed under section 37ZC(10), or to both, and that the person is neither—

- (a) entitled to attendance allowance or mobility allowance or both; nor
- (b) awaiting a determination by an adjudicating authority on—
  - (i) a claim made by him or on his behalf for one or both of those benefits,

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(21) Section 100D was inserted by paragraph 5 of Schedule 1 to Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(22) Section 37ZE was inserted by Article 3(2) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

- (ii) an application for a review, made in accordance with section 104(2), of a decision relating to one or both of those benefits, or
- (iii) an appeal from a decision given on a claim or an application for a review of a decision relating to one or both of those benefits.

(2) Subject to paragraphs (3) and (4), where in determining a person's claim for, or application for a review of a decision relating to, disability living allowance in a case to which this regulation applies, an adjudicating authority is satisfied that the person—

- (a) in addition to satisfying the conditions of entitlement to the care component, also satisfied the conditions of entitlement to attendance allowance for a period before 6th April 1992; or
- (b) in addition to satisfying the conditions of entitlement to the mobility component, also satisfied the conditions of entitlement to mobility allowance for a period before 6th April 1992,

other than the condition that he makes a claim for the benefit in question in the manner and within the time prescribed in relation thereto, the authority shall treat the claim for disability living allowance or, in the case of an application for a review of the decision relating to disability living allowance, the claim on which that decision was made, as a claim also for—

- (i) attendance allowance, where sub-paragraph (a) is satisfied,
- (ii) mobility allowance, where sub-paragraph (b) is satisfied, or
- (iii) attendance allowance and mobility allowance, where subparagraphs (a) and (b) are satisfied, and shall determine that claim accordingly.

(3) Where a claim for disability living allowance is a claim for a single component in accordance with regulation 16 then paragraph (2) shall apply only where the adjudicating authority is satisfied that the person fulfils or fulfilled the conditions of entitlement to—

- (a) attendance allowance, where the claim is for the care component; or
- (b) mobility allowance, where the claim is for the mobility component.

(4) Any award of mobility allowance or attendance allowance arising on a claim treated as made in accordance with paragraph (2) shall be for a period ending not later than 5th April 1992.

(5) Where an adjudicating authority is satisfied that the person, whose claim or application he is determining, satisfies the conditions of entitlement to mobility allowance for a period before 6th April 1992, then he shall determine that claim or application as if section 37ZC(9)(a) were omitted.

### **Claim for disability living allowance treated as not having been made**

**18.**—(1) Subject to paragraph (2), a claim for disability living allowance shall be treated as not having been made where the person who made the claim, or on whose behalf the claim was made—

- (a) has an award of both attendance allowance and mobility allowance and each award is for a period due to expire after 5th April 1992;
- (b) has an existing award of disability living allowance, consisting of both components;
- (c) has two existing awards of disability living allowance, where one award consists of the care component and the other award consists of the mobility component; or
- (d) has an award of disability living allowance consisting of one component and has in addition submitted another claim for a single component of that benefit in accordance with regulation 16.

(2) Paragraph (1) shall not apply where the claim for disability living allowance is made in anticipation of the expiry of the award of attendance allowance or of mobility allowance or of disability living allowance.

### **Claims for attendance allowance or mobility allowance treated as not having been made**

19. Where after 2nd February 1992 a person has made a claim for disability living allowance, then any claim made on that day or subsequent to that day for attendance allowance or mobility allowance shall be treated as not having been made.

### **Claims for disability living allowance where a person has an award of attendance allowance or mobility allowance**

20.—(1) Subject to paragraph (3), where a person—

- (a) has an award of attendance allowance; and
- (b) makes a claim for disability living allowance,

the claim for the care component shall be treated as not having been made.

(2) Subject to paragraph (3), where a person—

- (a) has an award of mobility allowance; and
- (b) makes a claim for disability living allowance,

the claim for the mobility component shall be treated as not having been made.

(3) Where the claim for disability living allowance is made in anticipation of the expiry of an award of attendance allowance or of mobility allowance, then paragraph (1) or, as the case may be, paragraph (2) shall not apply.

### **Claims for both old and new benefits outstanding**

- 21.—(1) This regulation applies where—
- (a) a claim for either mobility allowance or attendance allowance, or both, has been made by or on behalf of a person;
  - (b) the claim or claims have not been determined by 3rd February 1992, or if it or they have been determined the decision given was that no award be made and an application for a review of that decision or an appeal to an appeal tribunal from that decision awaits determination on or after 3rd February 1992; and
  - (c) a claim for disability living allowance is made by the person mentioned in subparagraph (a) before the determination on the claim or, as the case may be, the application for review or appeal, is made.
- (2) Where the person mentioned in paragraph (1)(a) has claimed—
- (a) attendance allowance, but not mobility allowance, the claim for disability living allowance shall be treated, until the claim, application for review or appeal is determined, as a claim for the mobility component only;
  - (b) mobility allowance, but not attendance allowance, the claim for disability living allowance shall be treated, until the claim, application for review or appeal is determined, as a claim for the care component only; or
  - (c) attendance allowance and mobility allowance, the claim for disability living allowance shall be treated, until the claims, applications for reviews or appeals in respect of both those benefits are determined, as not having been made.
- (3) When the claim, application for review or appeal is, or both are, determined and—
- (a) the person is awarded attendance allowance, then the claim for the care component shall be treated as not having been made;
  - (b) the person is awarded mobility allowance, then the claim for the mobility component shall be treated as not having been made;

- (c) the person is awarded both attendance allowance and mobility allowance, then the claim for disability living allowance shall continue to be treated as not having been made; or
- (d) no award is made, the claim for disability living allowance in so far as it has not been determined, shall then be referred to the adjudication officer for his determination.

### **Determination of claims for, or of applications for review of decisions relating to, attendance allowance**

**22.**—(1) The Board shall not consider any question reserved for their determination under section 105(3) where the claim for, or application for a review of a decision relating to, attendance allowance was made after 15th March 1992, whether or not the person to whom the question refers has attained the age of 65.

(2) In a case to which paragraph (1) applies, an adjudication officer shall determine the claim, or application for review, in accordance with the system of adjudication for attendance allowance introduced by the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991.

(3) Any question referred for determination by the Board, under section 105(3) or 106(1) which has not been determined by 5th April 1992, shall be determined as soon as is reasonably practicable thereafter in accordance with paragraph (4).

(4) For the purposes of paragraph (3), the question shall be determined—

- (a) except in a case to which sub-paragraph (b) applies, by an adjudication officer; or
- (b) where the application for a review of a decision of the Board is made within 3 months of that decision being given, as a second tier adjudication.

(5) For the purposes of this regulation, any application for a review of a decision which required the leave of the Board shall itself be treated as an application for review.

(6) In determining any question in accordance with paragraph (4) any correspondence issuing from the Board indicating the matters which, in the Board's opinion arise on a question before them, together with the submissions (if any) made by or on behalf of the claimant in response to that correspondence, may be taken into account by an adjudication officer as evidence relating to the question to be determined.

(7) Where, before 6th April 1992, the Board has issued a certificate in accordance with section 35(2)(**23**) but an adjudication officer has not determined the claim or, as the case may be, the application for review to which the certificate relates, then in determining that claim or application for review an adjudication officer shall treat the certificate—

- (a) if it specifies both the conditions mentioned in section 35(1)(a) and (b)(**24**), as evidence that the person satisfies or is likely to satisfy both the conditions mentioned in subsection (1)(a) and (b) of section 35 throughout the period mentioned in the certificate; and
- (b) if it specifies one or other of those conditions, but not both, as evidence of his falling within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout the period mentioned in the certificate.

(8) Where the Board has, before 6th April 1992, determined a question referred to them under section 105(3) and the decision is such that no award of attendance allowance could have been made on the basis of it, then in determining on or after 6th April 1992 any claim for, or application for a review of a decision relating to, attendance allowance to which the Board's decision relates, an adjudication officer shall treat the decision of the Board, and any reasons given by the Board in

(23) Section 35(2) was amended by Article 3(2) of the [Social Security \(Northern Ireland\) Order 1979 \(S. I. 1979/396 \(N. I. 5\)\)](#) and paragraph 5(2) of Schedule 8 to the [Social Security \(Northern Ireland\) Order 1989 \(S. I. 1989/1342 \(N. I. 13\)\)](#)

(24) Section 35(1)(b) was substituted by Article 3(1) of the [Social Security \(Northern Ireland\) Order 1988](#)

support of their decision, as evidence that the person does not satisfy those requirements to which the decision relates.

(9) For the purposes of the provisions of Part III of the Act in so far as they relate to the review of decisions of adjudication officers, any certificate issued by the former Board shall, after 5th April 1992, be treated as a decision of an adjudication officer and as such shall be subject to review on the same grounds and in the same circumstances as decisions of adjudication officers.

### **Appeals to Commissioners from decisions of the Board**

**23.**—(1) This regulation applies where—

- (a) a person has appealed to the Commissioner against a determination of the Board under section 106(2)(**25**); and
- (b) the Commissioner determines the appeal on or after 16th March 1992.

(2) Where the Commissioner holds that the Board’s decision was erroneous in point of law, he shall set it aside and—

- (a) he shall have the power—
  - (i) to give the decision which he considers the Board should have given, if he can do so without making fresh or further findings of fact, or
  - (ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; or
- (b) in any other case he shall refer the decision for second tier adjudication with directions for its determination.

(3) Where, in accordance with paragraph (2)(a), the Commissioner gives the decision himself, he shall refer that decision to an adjudication officer with directions to determine the claim or application for review from which the appeal to the Commissioner arose.

### **Persons claiming mobility allowance**

**24.**—(1) In this regulation, the expression “medical question” has the meaning it bore in regulation 53 of the Adjudication Regulations on 3rd February 1992.

(2) Any claim for mobility allowance made after 15th March 1992, or any application for a review of a decision made after 9th February 1992 relating to the medical question or otherwise to mobility allowance, shall be subject to adjudication in accordance with the provisions of the Act relating to disability living allowance, and the modifications, additions and exclusions set out in Section B of Part IV of the Adjudication Regulations shall be disregarded.

(3) Subject to paragraphs (4) to (14), where a claim for, or an application for a review of a decision relating to, mobility allowance, other than a claim or application for review mentioned in paragraph (2), has not been determined as at 6th April 1992, then that claim or application for review shall as from that date be subject to adjudication in accordance with the provisions in the Act relating to disability living allowance.

(4) Where a medical question arose on a claim or question to which paragraph (3) refers then, in determining that claim or question, the adjudication officer—

- (a) shall have regard to any report received from the medical practitioner to whom the medical question has been referred;
- (b) if the report from the medical practitioner to whom the medical question has been referred has not been received by the adjudication officer, may—



- (i) subject to sub-paragraph (ii), await that report and have regard to it before determining the claim or application for review, or
  - (ii) where that report has not been received by the adjudication officer within 6 weeks of the question being referred to the medical practitioner, determine the claim or application for review without waiting for that report;
  - (c) where the medical question has been determined by a medical board before 6th April 1992, shall have regard to any report made by the medical board on that question;
  - (d) where the medical question has been referred to a medical board otherwise than on an appeal by the person claiming the allowance, but the medical board has not determined that question by 6th April 1992, shall consider the question as if—
    - (i) the reference had not been made, and
    - (ii) the provisions in section 115C(26) (references of claims to medical practitioners and the Disability Living Allowance Advisory Board) relating to disability living allowance applied also to the medical question;
  - (e) where the medical question has been referred to the medical board following an appeal by the person claiming the allowance but the medical board has not determined that question by 6th April 1992, shall consider the question as if—
    - (i) it were an application for a review under section 100A(1) (reviews of decisions by adjudication officers) of the decision appealed against, and
    - (ii) the provisions in section 115C relating to disability living allowance applied also to the medical question;
  - (f) where the medical question has been referred to a medical appeal tribunal, shall be bound by any decision given by the medical appeal tribunal on the matters to which it relates.
- (5) No reference on a medical question to a medical board shall be made by an adjudication officer after 9th February 1992.
- (6) Any medical question which would, but for paragraph (5), have been referred to a medical board shall be subject to adjudication in accordance with the provisions of the Act relating to disability living allowance, and for this purpose the medical question shall be determined as though it were a second tier adjudication.
- (7) Any appeal on a medical question from a decision of a medical board which is made on or after 10th February 1992 shall be subject to adjudication in accordance with the provisions of the Act relating to disability living allowance and the provisions of Section B of Part IV of the Adjudication Regulations shall be disregarded.
- (8) Section 100D(1) shall apply to the appeal mentioned in paragraph (7) as if the decision appealed against were the decision of an adjudication officer given on review under section 100A(1) and the appeal shall be to a disability appeal tribunal.
- (9) Any medical question referred to a medical appeal tribunal which has not been determined by 6th April 1992 shall—
- (a) where the person to whom the question relates so consents, continue to be heard by the medical appeal tribunal; or
  - (b) where he does not consent, be subject to adjudication in accordance with the provisions of the Act relating to disability living allowance, and for this purpose, the medical question shall be determined by a disability appeal tribunal and not by a medical appeal tribunal.

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(26) Section 115C was inserted by paragraph 13 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(10) Where a disability appeal tribunal is determining, in accordance with paragraph (9), a medical question which was considered by a medical appeal tribunal but adjourned with a request for further information or a report, then the disability appeal tribunal shall await the submission of that information or report but not for more than 3 months from the date the information or report was requested, and shall, if it is available, take it into account in determining the question before them.

(11) Any decision of an adjudication officer, a medical board or a medical appeal tribunal on a medical question may be reviewed at any time by an adjudication officer if—

- (a) he is satisfied, in the case of a decision of a medical appeal tribunal by fresh evidence, that the decision was given in ignorance of, or was based upon a mistake as to, a material fact; or
- (b) there has been a relevant change of circumstances since the decision was given.

(12) Section 104A(3), (4) and (6) to (9) shall apply to reviews under paragraph (11) as they apply to reviews under that section.

(13) Section 112A(27) (appeal etc. on question of law to Commissioner) shall have effect in relation to a decision of a medical appeal tribunal on a medical question subject to the modifications that in subsection (5A) as if for “a medical appeal tribunal” there were substituted “an adjudication officer” and as if subsection (5B) were omitted.

(14) Where the Commissioner returns a question to an adjudication officer in accordance with paragraph (13) section 100D(1) shall apply to the decision of the adjudication officer on that question as if it were a decision given by him on a review under section 100A(1).

### **Reference to an adjudication officer**

**25.—**(1) This regulation applies where, on or after 3rd February 1992, a disability appeal tribunal are determining an appeal which relates to a claim for attendance allowance or a disability appeal tribunal or a medical appeal tribunal are determining an appeal which relates to a claim for mobility allowance.

(2) Where the disability appeal tribunal or medical appeal tribunal are unable to make an award of the benefit claimed, but, solely on the evidence before them they are satisfied that the claimant may qualify for—

- (a) where the claim relates to attendance allowance, the lowest of the three weekly rates of the care component prescribed under section 37ZB(3); or
- (b) where the claim relates to mobility allowance—
  - (i) the lower of the two weekly rates of the mobility component prescribed under section 37ZC(10), or
  - (ii) the higher of those two weekly rates because he may fall within section 37ZC(1)(c) (entitlement to mobility component for the severely mentally impaired),

the disability appeal tribunal or medical appeal tribunal may refer to an adjudication officer the question of the claimant’s entitlement to disability living allowance.

(3) Where an adjudication officer has a question referred to him in accordance with paragraph (2), he shall treat—

- (a) the claim for attendance allowance as being also a claim for disability living allowance relating solely to the care component; or
- (b) the claim for mobility allowance as being also a claim for disability living allowance relating solely to the mobility component,

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(27) Section 112A was inserted by paragraph 1 of Schedule 9 to the Social Security Act 1986 (c. 50) and amended by paragraph 9(2) of Schedule 3 to the Social Security (Northern Ireland) Order 1989

made on 3rd February 1992 and proceed to determine that claim in accordance with section 99(28).

(4) An award made in accordance with paragraph (3) may be for a period commencing on 6th April 1992 or on such later date as the adjudication officer may, in the circumstances of the particular case, determine.

### **Payments of disability living allowance**

**26.**—(1) This regulation applies to the payment of awards of disability living allowance where the award arises in accordance with Part II or III of these regulations.

(2) Subject to paragraphs (3), (4) and (5), where a person has an award of attendance allowance, mobility allowance or disability living allowance which—

(a) is payable by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations; and

(b) is superseded by an award which is treated as made under Part II or III of these regulations, the award mentioned in sub-paragraph (b) shall continue to be paid by direct credit transfer into the same bank or other account as the award which it superseded; and for this purpose, any application made or treated as made and any consent given or treated as given in relation to the terminated award shall be treated as made or given in relation to the award mentioned in sub-paragraph (b).

(3) Where a person—

(a) has two awards of disability living allowance; and

(b) those awards are paid separately, but into the same bank or other account, by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations,

then those payments may at any time before 6th April 1993 be combined into one payment, equal to the aggregate of the two payments, payable by direct credit transfer into that account.

(4) Where a person has two awards of disability living allowance paid by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations into different accounts, those payments may, with the consent of the Department, be made into such one bank or other account as the person to whom the payments are made may specify in a notice in writing to the Department.

(5) For the purposes of paragraph (3), any application made or treated as made and any consent given or treated as given in relation to a terminated or cancelled award shall be treated as made or given in relation to the award treated as having been made by virtue of these regulations.

(6) Where a person has an award of disability living allowance which is payable by direct credit transfer in accordance with regulation 21 of the Claims and Payments Regulations, any further award of disability living allowance made to that person shall be paid by direct credit transfer into the same bank or other account as the award first mentioned; and any application made or treated as made and any consent given or treated as given in relation to the award first mentioned shall be treated as made or given also in relation to the further award.

(7) Subject to paragraphs (8) to (14), where attendance allowance was payable to a person otherwise than by direct credit transfer, any disability living allowance arising in accordance with Part II of these regulations shall be payable on the day of the week on which attendance allowance was or would have been payable.

(8) Subject to paragraph (9), where mobility allowance was payable to a person otherwise than by direct credit transfer, any disability living allowance arising in accordance with regulation 8 shall be payable on Wednesdays.

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(28) Section 99 was amended by paragraph 4 of Schedule 5 to the Social Security (Northern Ireland) Order 1986 and paragraph 2 of Schedule 3 to the Social Security (Northern Ireland) Order 1989. See also Article 3(3) of the Social Security Adjudications (Northern Ireland) Order 1983

(9) Where both attendance allowance and mobility allowance were payable to a person otherwise than by direct credit transfer, any disability living allowance payable in accordance with an award treated as made by virtue of these regulations shall be payable—

- (a) from such date before 6th April 1993 as the Department may in any particular case determine—
  - (i) except in a case to which head (ii) applies, on Wednesdays, or
  - (ii) where in any particular case payment of attendance allowance was combined with the payment of another benefit and that benefit was payable on a day of the week other than Wednesday, the care component shall be payable on that day and the mobility component shall be payable on Wednesdays;
- (b) until that day, the care component, shall be payable in the manner in which and at the time when attendance allowance was payable and, the mobility component shall likewise be payable in the manner in which and at the time when mobility allowance was payable.

(10) Where attendance allowance was payable to a person otherwise than by direct credit transfer and an award of the mobility component is made to that person, any award of disability living allowance treated as having been made by virtue of these regulations shall be payable, from such date before 6th April 1993 as the Department may in any particular case determine—

- (a) except in a case to which sub-paragraph (b) applies, on Wednesdays; or
- (b) where in any particular case payment of attendance allowance was combined with the payment of another benefit and that benefit was payable on a day of the week other than Wednesday, the care component shall be payable on that day and the mobility component shall be payable on Wednesdays.

(11) Where in accordance with this regulation payment of a person's award of disability living allowance is changed to a Wednesday, and because of this change in pay day the interval between the first Wednesday pay day and the last previous pay day (referred to in this paragraph as "the relevant period") is greater than it would have been but for that change, then the first Wednesday payment of disability living allowance shall include by way of adjustment an additional payment which is equal to the daily rate for the benefit or part of a benefit which is subject to that change, multiplied by a number determined by deducting from the number of days in the relevant period, the number of days which would have been in that period but for the change in pay days; and for the purposes of this paragraph the "daily rate" is an amount equal to one-seventh of the weekly rate, rounded up to the next penny.

(12) Where before 6th April 1992 a person has an award of attendance allowance and of mobility allowance and—

- (a) those awards are paid in a different manner; and
- (b) both awards are terminated or cancelled in accordance with Parts II and III of these regulations,

then as from 6th April 1992, the awards of disability living allowance shall be paid in accordance with paragraph (13).

(13) In cases to which this paragraph refers, disability living allowance shall be paid—

- (a) from such date before 5th April 1993 as the Department may in any particular case determine—
  - (i) on the day, for the period and in the manner specified in an election made by that person and approved by the Department, or
  - (ii) where no such election is made within 4 weeks of a form of election being posted to that person, on Wednesdays by means of a benefit order book;

- (b) until that date, on such days, at such intervals and in such manner as the former awards of attendance allowance and mobility allowance were paid.
- (14) Where a person who has not attained the age of 65 on 6th April 1992—
  - (a) has claimed attendance allowance or disability living allowance and pursuant to that claim an award of attendance allowance was made after 2nd February 1992; or
  - (b) has applied for a review of a decision of the Board or the adjudication officer not to award attendance allowance and pursuant to that application an award of attendance allowance is made after 2nd February 1992,

and that award is for a period commencing before 6th April 1992, both the attendance allowance and any disability living allowance granted in place of the award of attendance allowance shall be payable at four weekly intervals on Wednesdays, unless in any particular case the Department arranges otherwise.

#### **Persons unable to act**

27.—(1) Subject to paragraphs (2) to (4), a person who, before regulation 3(3) came into operation, was entitled to attendance allowance in respect of a child shall, after 5th April 1992 be regarded for the purposes of regulation 42 of the Claims and Payments Regulations (persons able to act on behalf of children) as the person appointed on behalf of that child.

- (2) An appointment having effect in accordance with paragraph (1) may be terminated—
  - (a) when the child attains the age of 16 years;
  - (b) when the child ceases to be entitled to disability living allowance; or
  - (c) in accordance with regulation 42 of the Claims and Payments Regulations.

(3) Where on 5th April 1992 a person holds an appointment in respect of a child in accordance with regulation 42 of the Claims and Payments Regulations and that person is different from the person mentioned in paragraph (1) as being entitled to an attendance allowance in respect of that same child, then that appointment shall terminate on 6th April 1992 and the Department shall make a new appointment in accordance with regulation 42 of the Claims and Payments Regulations, to take effect on that day.

(4) The day specified in this regulation is the day on which the Department, in accordance with regulation 26, directs that both payments of disability living allowance be combined into a single payment.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

L.S.

29th January 1992.

*A. N. Burns*  
Assistant Secretary

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## EXPLANATORY NOTE

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

These regulations come into operation on 3rd February 1992 and are consequential upon the coming into operation of Article 7 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (“the 1991 Order”) which enables the Department to make regulations on matters in relation to the substitution of disability living allowance for attendance allowance and mobility allowance and the dissolution of the Attendance Allowance Board.

Part I of the regulations relates to their citation, commencement and interpretation (regulation 1).

Part II relates to the replacement of attendance allowance by disability living allowance. It provides for the termination or cancellation of awards of attendance allowance current at 6th April 1992 (regulation 2); provides for their replacement by an award of the care component of disability living allowance (regulation 3); relates to the adjudication of claims for, and applications for reviews of decisions relating to, attendance allowance in the period before 6th April 1992 (regulation 4); enables an adjudication officer, where a claim for attendance allowance has been disallowed, to award, in certain circumstances, the lowest of the three weekly rates of the care component of disability living allowance (regulation 5); and provides that a person who is aged 65 or over, but has not attained the age of 66, and who has an award of attendance allowance may, where they are also awarded the mobility component of disability living allowance, have their award of attendance allowance terminated and replaced with an award of the care component of disability living allowance (regulation 6).

Part III relates to the replacement of mobility allowance by disability living allowance. It provides for the termination or cancellation of awards of mobility allowance current at 6th April 1992 (regulation 7); provides for their replacement by an award of the mobility component of disability living allowance (regulation 8); relates to the adjudication of claims for, and applications for reviews of decisions relating to, mobility allowance in the period after 5th April 1992 (regulation 9); and enables an adjudication officer, where a claim for mobility allowance has been disallowed, to award, in certain circumstances, the lower of the two weekly rates of the mobility component of disability living allowance and enables an award of the higher of those two rates to be made in specified circumstances (regulation 10).

Part IV contains provisions common to both Parts II and III. It enables two separate awards of disability living allowance to co-exist (regulation 11); enables awards of disability living allowance to be backdated where the person delayed submitting a claim while the decision on a claim for attendance allowance or mobility allowance was awaited (regulation 12); provides for the conversion of two awards of disability living allowance into a single award as from 5th April 1993 (regulation 13); and contains provisions relating to the review of awards of disability living allowance treated under these regulations as having been made (regulation 14).

Part V relates to claims, payments and adjudication. It contains a definition of the expression “second tier adjudication” which is used only in this Part of the regulations (regulation 15); makes provision so that claims for a single component of disability living allowance may be made (regulation 16); provides that an adjudicating authority may treat a claim for a single component of disability living allowance as a claim also for attendance allowance or, as the case may be, mobility allowance and may award the benefit in question for a period ending not later than 5th April 1992 (regulation 17); provides for claims for disability living allowance, attendance allowance or mobility allowance to be treated as not having been made (regulations 18 to 20); provides for the determination of claims for, or applications for reviews of decisions relating to, attendance allowance and mobility allowance

in the changeover period (regulations 21 to 25); provides for the payment of disability living allowance where the person previously had an award of attendance allowance or mobility allowance (regulation 26); and relates specifically to beneficiaries who are unable to act (regulation 27).

The regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Section 37ZD of the Social Security (Northern Ireland) Act 1975, as inserted by Article 3(2) of the 1991 Order, and Articles 7 and 13 of the 1991 Order are some of the enabling provisions under which these regulations are made. They were brought into operation, for the purpose only of authorising the making of regulations on 19th November 1991, for the making of claims for, and the determination of claims and questions relating to, disability living allowance, on 3rd February 1992 and for all other purposes on 6th April 1992, by virtue of Article 2 of the [Disability Living Allowance and Disability Working Allowance \(1991 Order\) \(Commencement No. 2\) Order \(Northern Ireland\) 1991 \(S. R. 1991 No. 501 \(C. 24\)\)](#).