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STATUTORY RULES OF NORTHERN IRELAND

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**1992 No. 78**

**The Disability Working Allowance (General)  
Regulations (Northern Ireland) 1992**

**PART IV**

**MEMBERSHIP OF A FAMILY**

**Persons of a prescribed description**

**8.—(1)** Subject to paragraph (2), a person of a prescribed description for the purposes of Article 21(11) of the Order as it applies to disability working allowance is a person aged 16 or over but under 19 who is receiving full-time education within Article 4(1)(b) of the Child Benefit (Northern Ireland) Order 1975(1) (meaning of child), and in these regulations such a person is referred to as “a young person”.

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

- (a) who is entitled to income support or would, but for Article 21(9) of the Order, be so entitled;
- (b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations (Northern Ireland) 1979(2) (interpretation); or
- (c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of those regulations.

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

**9.—(1)** Subject to paragraphs (2) and (3), a person shall be treated as responsible for a child or young person who is normally living with him.

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

- (a) the person who is receiving child benefit under Part II of the Child Benefit (Northern Ireland) Order 1975 in respect of him; or
- (b) if there is no such person—
  - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
  - (ii) in any other case the person who has primary responsibility for him.

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(1) Article 4(1)(b) was amended by Article 71(1)(a) of the Social Security (Northern Ireland) Order 1986

(2) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 No. 273

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

### **Membership of the same household**

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

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

- (a) is a patient or in residential accommodation on account of physical or mental handicap or physical or mental illness and has been so accommodated for the 12 weeks immediately before the date of claim and is no longer in regular contact with the claimant or any member of the claimant’s household;
- (b) has been boarded out with the claimant or his partner prior to adoption;
- (c) is boarded out with the claimant or his partner under a relevant enactment;
- (d) has been placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations (Northern Ireland) 1989(3);
- (e) is detained in custody under a sentence imposed by a court; or
- (f) is in a training school within the meaning of section 137 of the Children and Young Persons Act (Northern Ireland) 1968(4) (approval of schools).

(3) In this regulation—

- (a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison, young offenders centre or a training school) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(5);
- (b) “relevant enactment” means the Guardianship of Infants Act 1886(6), the Army Act 1955(7), the Air Force Act 1955(8), the Naval Discipline Act 1957(9), the Children and Young Persons Act (Northern Ireland) 1968, the Health and Personal Social Services (Northern Ireland) Order 1972(10), the Family Law Reform (Northern Ireland) Order 1977(11), the Matrimonial Causes (Northern Ireland) Order 1978(12), the Domestic Proceedings (Northern Ireland) Order 1980(13) and the Adoption (Northern Ireland) Order 1987(14);
- (c) “residential accommodation” means accommodation for a person whose stay in the accommodation has become other than temporary which is provided under—

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(3) S.R. 1989 No. 253

(4) 1968 c. 34 (N.I.)

(5) S.R. 1975 No. 109; relevant amending regulations are S.R. 1987 No. 391

(6) 1886 c. 27

(7) 1955 c. 18

(8) 1955 c. 19

(9) 1957 c. 53

(10) S.I. 1972/1265 (N.I. 14)

(11) S.I. 1977/1250 (N.I. 17)

(12) S.I. 1978/1045 (N.I. 15)

(13) S.I. 1980/563 (N.I. 5)

(14) S.I. 1987/2203 (N.I. 22)

- (i) Article 15 (general social welfare) or 36 (accommodation for persons in need in premises maintained by certain persons) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(15)</sup>, or
- (ii) Article 7 (prevention of illness, care and after-care) or 8 (care of mothers and young children) of that Order.

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

11.—(1) Where one member of a married or unmarried couple has taken up residence in accommodation provided under Article 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 he shall be treated as no longer being a member of the same household as his partner unless the stay in that accommodation is temporary.

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

- (a) unless he has been a patient in a hospital for 52 weeks or more;
- (b) unless he is a patient detained in a hospital provided under Article 110 of the Mental Health (Northern Ireland) Order 1986<sup>(16)</sup> (provision of special accommodation by Department); or
- (c) unless he is detained in legal custody whilst serving a sentence of 52 weeks or more imposed by a court,

but shall be treated as not being a member of the same household as his partner wherever the conditions in sub-paragraph (a), (b) or (c) are fulfilled.

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

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<sup>(15)</sup> Article 15 was extended by Article 11(1) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) and sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and Article 36 was amended by Article 11(2) of the said Order

<sup>(16)</sup> S.I. 1986/595 (N.I. 4)