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STATUTORY RULES OF NORTHERN IRELAND

2016 No. 235

SOCIAL SECURITY

The Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations (Northern Ireland) 2016

Made - - - -	*27th May 2016*
Laid before Parliament	*6th June 2016*
Coming into operation	*6th July 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(1)(b) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and Articles 91, 98 and 99(1)(a) of, and paragraphs 1(1) and 3(1)(a) and (c) of Schedule 10 to, the Welfare Reform (Northern Ireland) Order 2015(**2**).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1) of the Welfare Reform (Northern Ireland) Order 2015.

Citation and commencement

1. These Regulations may be cited as the Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations (Northern Ireland) 2016 and come into operation on 6th July 2016.

Amendment of the Social Security (Disability Living Allowance) Regulations

2.—(1) The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**3**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 8(**4**) (hospitalisation)—

(a) for the heading, substitute "Hospitalisation of persons aged 18 or over";

(**1**) 1992 c. 8; section 71(1) was amended by paragraph 32(2) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 4(7)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7)

(**2**) S.I. 2015/2006 (N.I. 1)

(**3**) S.R. 1992 No. 32; relevant amending Regulations are S.R. 1992 Nos. 144 and 481, S.R. 1993 Nos. 149 and 165, S.R. 1996 Nos. 225 and 290, S.R. 1999 Nos. 221 and 428 (C. 32), S.R. 2000 No. 195, S.R. 2007 No. 431 and S.R. 2016 No. 229

(**4**) Regulation 8 was amended by regulation 3(2) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1999 No. 221 and regulation 3(2) of S.R. 2000 No. 195

(b) in paragraph (1) after "Subject to" insert "paragraph (4) and"; and

(c) at the end add—

"(4) This regulation does not apply to a person who was under the age of 18 on the day on which he entered the hospital or other similar institution referred to in paragraph (1) to begin his current period as an in-patient.".

(3) In regulation 10(**5**) (exemption from regulations 8 and 9)—

(a) in paragraph (1) for "paragraphs (2)" substitute "paragraphs (3)";

(b) omit paragraph (2);

(c) in paragraph (3) omit "or, as the case may be, paragraph (2)"; and

(d) in paragraph (5) for "paragraphs (1) and (2)" substitute "paragraph (1)".

(4) In regulation 12A(**6**) (hospitalisation in mobility component cases)—

(a) in the title after "Hospitalisation" insert "of persons aged 18 or over";

(b) in paragraph (1) after "Subject to" insert "paragraph (4) and"; and

(c) after paragraph (3) add—

"(4) This regulation does not apply to a person who was under the age of 18 on the day on which he entered the hospital or other similar institution referred to in paragraph (1) to begin his current period as an in-patient.".

(5) In regulation 12B(**7**) (exemption from regulation 12A)—

(a) omit paragraph (1)(b) and the word "or" preceding it; and

(b) in paragraph (7), omit "or, as the case may be, paragraph (1)(b),".

Amendment of the Personal Independence Payment Regulations

3. In regulation 29 of the Personal Independence Payment Regulations (Northern Ireland) 2016(**8**) (hospital in-patients)—

(a) for the heading, substitute "Hospital in-patients aged 18 or over";

(b) in paragraph (1) after "Subject to" insert "paragraph (3) and"; and

(c) after paragraph (2) add—

"(3) This regulation does not apply if C was under the age of 18 on the day on which C entered the hospital or similar institution referred to in Article 91(2) to begin C's current period as an in-patient.".

Amendment of the Personal Independence Payment (Transitional Provisions) Regulations

4.—(1) The Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016(**9**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) (interpretation) after the definition of "electronic communication" insert—

(**5**) Regulation 10 was amended by regulation 3 of S.R. 1992 No. 144, regulation 4(3) of S.R. 1993 No. 149, regulation 3(3) of S.R. 1993 No. 165, Article 7(4)(b) of S.R. 1999 No. 428 (C. 32), regulation 3(4) of S.R. 2000 No. 195 and regulation 3(3) of S.R. 2007 No. 431

(**6**) Regulation 12A was inserted by regulation 4(3) of S.R. 1996 No. 225 and amended by regulation 4(3) of S.R. 1999 No. 221 and regulation 3(2) of S.R. 2000 No. 195

(**7**) Regulation 12B was inserted by regulation 4(3) of S.R. 1996 No. 225 and amended by regulation 2 of S.R. 1996 No. 290, Article 7(4)(c) of S.R. 1999 No. 428 (C. 32) and regulation 4(7) of S.R. 2016 No. 229

(**8**) S.R. 2016 No. 217

(**9**) S.R. 2016 No. 227

""exempt person" means a DLA entitled person in respect of whom, by virtue of regulation 8(4) or 12A(4) of the Disability Living Allowance Regulations (person under the age of 18 on the day of entry into hospital), a disability living allowance is payable even though that person is maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or other similar institution;".

(3) In regulation 3 (invitations to persons entitled to disability living allowance to claim personal independence payment)—

(a) in paragraph (3) at the beginning insert "Subject to paragraphs (4) and (4A),";

(b) after paragraph (4) insert—

"(4A) If the DLA entitled person referred to in paragraph (3) is an exempt person, the Department must not send the notification required by paragraph (3) until the DLA entitled person ceases to be an exempt person.";

(c) in paragraph (5) at the beginning insert "Subject to paragraph (5A),"; and

(d) after paragraph (5) insert—

"(5A) If the DLA entitled person referred to in paragraph (5) is an exempt person, the Department must not send the notification required by paragraph (5) until the DLA entitled person ceases to be an exempt person.".

(4) In regulation 19(1)(b) (general power to extend fixed term period awards of disability living allowance) after "expire" insert "while the DLA entitled person is an exempt person to whom a notification cannot be sent by virtue of regulation 3(4A) or (5A), or".

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

Justin Tomlinson
Parliamentary Under Secretary of State,
Department for Work and Pensions

27th May 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 ("the Disability Living Allowance Regulations"), the Personal Independence Payment Regulations (Northern Ireland) 2016 ("the Personal Independence Payment Regulations") and the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 ("the Personal Independence Payment Transitional Regulations") following the Supreme Court's judgment in Mathieson v Secretary of State for Work and Pensions [2015] UKSC 47 (8th July 2015).

Regulations 8 and 12A of the Disability Living Allowance Regulations provide that for a person to receive payment of disability living allowance, that person is not maintained free of charge while undergoing medical or other treatment as an in-patient in a Health Service or Defence Council hospital or other similar institution. There is an equivalent provision in regulation 29 of the Personal Independence Payment Regulations.

The provisions in the Disability Living Allowance Regulations, which were the subject of the Supreme Court's judgment, are amended by regulation 2(2) and (4) of these Regulations. The equivalent provision in the Personal Independence Payment Regulations is amended by regulation 3 of these Regulations. The effect is that these provisions will no longer apply to any person who was under the age of 18 on the day on which that person's current period as an in-patient in a hospital or similar institution began.

Regulation 2(3) and (5) makes consequential amendments to regulations 10 and 12B of the Disability Living Allowance Regulations, in particular to remove the current exemptions for persons under the age of 16. The current exemptions are more limited than those provided by these Regulations, as they apply only for the first 84 days in hospital, and do not apply if the person was in hospital on the first day of entitlement. No equivalent consequential amendments are required to the Personal Independence Payment Regulations because they do not apply to persons under the age of 16.

Regulation 4 of these Regulations amends the Personal Independence Payment Transitional Regulations. Paragraph (2) inserts a new definition of "exempt person", covering a person who benefits from these Regulations. Paragraph (3) ensures that an exempt person must not be invited to apply for personal independence payment until they cease to be an exempt person. Paragraph (4) ensures that the person's award of a disability living allowance may, instead, be extended if the award of either component is for a fixed term.

An impact assessment has not been produced for this Rule as no impact on the private or voluntary sector is foreseen.