
DRAFT STATUTORY RULES OF NORTHERN IRELAND

2016 No.

The Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016

PART 6

General

Termination of welfare supplementary payment if caree ceases to receive welfare supplementary payment for loss of disability living allowance

20.—(1) This regulation applies where the caree ceases to be entitled to welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations 2016(1) (“the DLA Regulations”).

(2) Welfare supplementary payment under these Regulations must cease to be paid from the first payment of welfare supplementary payment under these Regulations following the date on which the caree ceased to be entitled to welfare supplementary payment under the DLA Regulations.

(3) Where further welfare supplementary payment is payable to the caree in accordance with regulation 6(4) of the DLA Regulations (appeal to the Commissioner), then further welfare supplementary payment is payable under Parts 2 to 5 of these Regulations as set out in paragraphs (4) and (5).

(4) The period during which further welfare supplementary payment is payable commences on the day following the day that leave to appeal to the Commissioner is granted as set out in regulation 6(5) of the DLA Regulations.

(5) The period during which welfare supplementary payment is payable ends—

- (a) after the first payment following the date on which the decision of the Commissioner is received by the Department as set out in regulation 6(6) of the DLA Regulations, or
- (b) on 31st March 2020,

whichever is first to occur.

(6) Where the caree’s entitlement to welfare supplementary payment under Part 2 of the DLA Regulations terminates but then recommences under regulation 14 of the DLA Regulations (eligibility under Part 4 following termination of welfare supplementary payment under Part 2), then paragraph (2) does not apply.

Termination of welfare supplementary payment if caree no longer entitled to personal independence payment

21.—(1) This regulation applies where the caree ceases to be entitled to personal independence payment.

(2) Welfare supplementary payment must cease to be paid from the day after the first payment of welfare supplementary payment following the date on which the caree ceases to be entitled to personal independence payment.

Termination of welfare supplementary payment on death of caree

22.—(1) Where the caree dies, welfare supplementary payment must cease to be paid at the expiry of 8 weeks beginning with the Sunday following the death (or beginning with the date of the death if the death occurred on a Sunday).

- (2) The period of payment must not exceed the time limit set out in regulation—
- (a) regulation 6(3),
 - (b) regulation 14(3), or
 - (c) regulation 18(3).

Review

23.—(1) The Department must establish procedures for reviewing a person's entitlement to welfare supplementary payment.

- (2) The procedures established must—
- (a) provide for a review to be carried out on the application of any person, and
 - (b) provide for the manner of making the application.
- (3) The procedures may, in particular, provide for—
- (a) the consideration of the applicant's entitlement to welfare supplementary payment by up to three persons nominated by the Department,
 - (b) the preparation of a report by these persons setting out their conclusions in relation to the applicant's entitlement to welfare supplementary payment and their recommendation as to the manner in which the matter should be finally determined.

Disregards

24. No account must be taken of entitlement to welfare supplementary payment in considering a person's entitlement to benefit under a statutory provision relating to social security (irrespective of the name or nature of the benefit).

Residency and presence in Northern Ireland

- 25.** A person is not entitled to welfare supplementary payment unless the person and caree—
- (a) are ordinarily resident in Northern Ireland, and
 - (b) are present in Northern Ireland.

Temporary absence from Northern Ireland

26.—(1) Subject to regulation 27, where the person or the caree are temporarily absent from Northern Ireland, they are treated as present in Northern Ireland for the purpose of these Regulations for the first 4 weeks of absence.

(2) The person or the caree are temporarily absent from Northern Ireland if, at the beginning of the period of absence, their absence is unlikely to exceed 52 weeks.

Temporary absence from Northern Ireland to receive medical treatment

27.—(1) Where the person or the caree are temporarily absent from Northern Ireland, they are treated as present in Northern Ireland for the purposes of these Regulations for the first 13 weeks of that absence, where—

- (a) the absence is solely in connection with arrangements made for their medical treatment for a disease or bodily or mental disablement which commenced before they left Northern Ireland; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
 - (i) outside Northern Ireland,
 - (ii) during the period whilst the person or the caree are temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation “temporarily absent” has the same meaning as in regulation 26(2).

Care home residents

28.—(1) Subject to regulation 31, no welfare supplementary payment is payable in respect of any period during which the person or the caree is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for the person or the caree are borne out of public funds by virtue of any of the statutory provisions referred to in paragraph (2).

(2) The statutory provisions are—

- (a) Article 5, 15 or 36 the Health and Personal Social Services (Northern Ireland) Order 1972(2),
- (b) the Mental Health (Northern Ireland) Order 1986(3),
- (c) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(4), or
- (d) any other statutory provision relating to persons under a disability or to young persons or to education or training except—
 - (i) Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986(5),
 - (ii) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(6), or
 - (iii) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(7).

(3) Subject to paragraph (4), paragraph (1) does not apply in the case of a person—

- (a) who has not attained the age of 18 and to whom—

(2) S.I. 1972/1265 (N.I. 14); Article 15 was amended by paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)); Article 36 was amended by section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N.I.)) and Article 45 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9))

(3) S.I. 1986/595 (N.I. 4)

(4) 2002 c. 6 (N.I.)

(5) S.I. 1986/594 (N.I. 3); Article 51 was substituted by Part 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1)) and certain functions transferred from the Department of Education by Parts I and II of Schedule 3 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481) and for certain purposes functions transferred by Article 7(a) of the Departments (Transfer of Functions) Order (Northern Ireland) 2001 (S.R. 2001 No. 229)

(6) S.I. 1993/2810 (N.I. 12)

(7) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(4) of the Finance Act 2003 (c. 14) and Article 11(1) of the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))

- (i) Article 17(b) of the Children (Northern Ireland) Order 1995⁽⁸⁾ applies because the person’s health is likely to be significantly impaired, or further impaired, without the provision of services for the person, or
- (ii) Article 17(c) of that Order applies, or
- (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by an education authority pursuant to its powers under Article 11 of the Education (Northern Ireland) Order 1996⁽⁹⁾.
- (4) Paragraph (3)(a) only applies during any period in which the Regional Health and Social Care Board or the Health and Social Care Trust looking after the person places the person in a private dwelling with a family, or with a relative of the person, or with some other suitable person.
- (5) In this regulation—
 - “care home” and “qualifying services” have the same meaning as in Article 90 of the Welfare Reform (Northern Ireland) Order 2015,
 - “Health and Social Care trust” means a body as established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991⁽¹⁰⁾, and
 - “the Regional Health and Social Care Board” means the body established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽¹¹⁾.

Hospital in-patients

29.—(1) Subject to regulation 31, no welfare supplementary payment is payable in respect of any period during which the person or the caree are undergoing medical or other treatment as an in-patient at a hospital or similar institution in circumstances in which any of the costs of the treatment, accommodation and related services provided are borne out of public funds.

(2) For the purposes of paragraph (1) the costs of treatment, accommodation or any related services are borne out of public funds if the person or the caree are undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

Prisoners

30. Subject to regulation 31, no welfare supplementary payment is payable to a person under these Regulations for a period during which the person or the caree is in prison or detained in legal custody.

Exceptions: care homes, hospitals and prisons

31. Regulation 28(1), 29(1) or, as the case may be, regulation 30 does not apply in respect of the first 28 days of any period during which a person is someone to whom any of those regulations apply.

⁽⁸⁾ S.I. 1995/755 (N.I. 2)

⁽⁹⁾ S.I. 1996/274 (N.I. 1)

⁽¹⁰⁾ S.I. 1991/194 (N.I. 1); Article 10 was amended by section 1 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.))

⁽¹¹⁾ 2009 c. 1 (N.I.)