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STATUTORY INSTRUMENTS

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**1991 No. 1712**

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

Disability living allowance

**Introduction of disability living allowance**

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

“(ca) disability living allowance;”.

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

**“Disability living allowance.**

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

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

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

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

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

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

**The care component.**

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

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

(i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods), or

(ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or

(b) he is so severely disabled physically or mentally that, by day, he requires from another person—

- (i) frequent attention throughout the day in connection with his bodily functions, or
    - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
  - (c) he is so severely disabled physically or mentally that, at night,—
    - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
    - (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- (2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—
- (a) throughout-
    - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
    - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
  - (b) he is likely to continue to satisfy one or other of those conditions throughout—
    - (i) a period of 6 months beginning with that date, or
    - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (3) Three weekly rates of the care component shall be prescribed.
- (4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
  - (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
  - (c) the lowest rate in any other case.
- (5) For the purposes of this section, a person who is terminally ill, as defined in section 35(2C) above, and makes a claim expressly on the ground that he is such a person, shall be taken—
- (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and
  - (b) to satisfy or to be likely to satisfy those conditions for the remainder of his life beginning with that date.
- (6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—
- (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and

(b) neither the condition mentioned in sub-paragraph (i) of subsection (1)(a) above nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—

(i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age, or

(ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.

(7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.

(8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—

(a) in pursuance of Article 5, 7, 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972; or

(b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

### **The mobility component.**

**37ZC.**—(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—

(a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

(b) he falls within subsection (2) below; or

(c) he falls within subsection (3) below; or

(d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

(2) A person falls within this subsection if—

(a) he is both blind and deaf; and

(b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if—

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 37ZB(1)(b) and (c) above.

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

(a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or

- (b) persons of his age in normal physical and mental health would not require such guidance or supervision.
- (5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.
- (6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.
- (7) A person who is to be taken for the purposes of section 37ZB above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.
- (8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.
- (9) A person shall not be entitled to the mobility component of a disability living allowance unless—
- (a) throughout—
    - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
    - (ii) such other period of 3 months as may be prescribed,
 he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and
  - (b) he is likely to continue to satisfy one or other of those conditions throughout—
    - (i) a period of 6 months beginning with that date, or
    - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (10) Two weekly rates of the mobility component shall be prescribed.
- (11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
  - (b) the lower rate in any other case.
- (12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 35(2C) above, and who makes a claim expressly on the ground that he is such a person—
- (a) subsection (9)(a) above shall be omitted; and
  - (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.
- (13) Regulations may prescribe cases in which a person who has the use—
- (a) of an invalid carriage or other vehicle provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978; or

- (b) of any prescribed description of appliance supplied under that Order being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

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

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

#### **Persons 65 or over.**

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

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

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

#### **Disability living allowance— supplementary.**

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

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

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

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

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

#### **Attendance allowance and mobility allowance**

**4.**—(1) In section 35(1) of the principal Act (qualifications for attendance allowance), for the words “or presence in Northern Ireland” there shall be substituted the words “and presence in Northern Ireland, he is aged 65 or over, he is not entitled to the care component of a disability living allowance”.

(2) The Attendance Allowance Board is hereby dissolved.

(3) Section 37A of the principal Act (mobility allowance) shall cease to have effect.

### **Disability Living Allowance Advisory Board for Northern Ireland**

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

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

- (a) the Board’s constitution;
- (b) the qualifications of its members;
- (c) the method of their appointment;
- (d) the term of office and other terms of appointment of its members;
- (e) their removal.

(3) Regulations may also make provision—

- (a) enabling the Board to appoint persons as advisers to it on matters on which in its opinion they are specially qualified;
- (b) for the appointment of officers and servants of the Board;
- (c) enabling the Board to act notwithstanding any vacancy among its members;
- (d) enabling the Board to make rules for regulating its procedure (including its quorum).

(4) The expenses of the Board to such an amount as may be approved by the Department of Finance and Personnel shall be paid by the Department.

(5) There may be paid as part of the expenses of the Board—

- (a) to all or any of the members of the Board, such salaries or other remuneration and travelling and other allowances;
- (b) to advisers to the Board, such fees; and
- (c) to such other persons as may be specified in regulations such travelling and other allowances (including compensation for loss of remunerative time),

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

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

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

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

### **Management of disability living allowance and attendance allowance, etc.**

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

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

### **Regulations supplementary to Articles 3 to 6**

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

(2) Without prejudice to the generality of this Article, regulations under this Article—

- (a) may provide for the termination or cancellation of awards of attendance allowance and awards of mobility allowance;
  - (b) may direct that a person whose award of either allowance has been terminated or cancelled by virtue of the regulations or who is a child of such a person shall by virtue of the regulations be treated as having been awarded one or more disability living allowances;
  - (c) may direct that a disability living allowance so treated as having been awarded shall consist of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded either component at such weekly rate and for such period as the regulations may specify;
  - (d) may provide for the termination in specified circumstances of an award of disability living allowance;
  - (e) may direct that in specified circumstances a person whose award of disability living allowance has been terminated by virtue of the regulations shall by virtue of the regulations be treated as having been granted a further award of a disability living allowance consisting of such component as the regulations may specify or, if the regulations so specify, of both components, and as having been awarded on the further award either component at such weekly rate and for such period as the regulations may specify;
  - (f) may provide for the review of awards made by virtue of sub-paragraph (b) or (e) and for the treatment of claims for disability living allowance in respect of beneficiaries with such awards;
  - (g) may direct that for specified purposes certificates issued by the Attendance Allowance Board shall be treated as evidence of such matters as may be specified in the regulations;
  - (h) may direct that for specified purposes the replacement of attendance allowance and mobility allowance by disability living allowance shall be disregarded;
  - (i) may direct that a claim for attendance allowance or mobility allowance shall be treated in specified circumstances and for specified purposes as a claim for disability living allowance or that a claim for disability living allowance shall be treated in specified circumstances and for specified purposes as a claim for attendance allowance or mobility allowance or both;
  - (j) may direct that in specified circumstances and for specified purposes a claim for a disability living allowance shall be treated as having been made when no such claim was in fact made;
  - (k) may direct that in specified circumstances a claim for attendance allowance, mobility allowance or disability living allowance shall be treated as not having been made;
  - (l) may direct that in specified circumstances where a person claims attendance allowance or mobility allowance or both, and also claims disability living allowance his claims may be treated as a single claim for such allowances for such periods as the regulations may specify;
  - (m) may direct that cases relating to mobility allowance shall be subject to adjudication in accordance with the provisions of the principal Act relating to disability living allowance; and
  - (n) may direct that, at a time before the Attendance Allowance Board is dissolved, in specified circumstances cases relating to attendance allowance shall be subject to adjudication under the system of adjudication for such cases introduced by this Order.
- (3) Regulations under this Article may provide that any provision of the principal Act which relates to disability living allowance, attendance allowance or mobility allowance so far as it so relates, and any provision of Part VII of the 1986 Order which is relevant to disability living allowance, attendance allowance or mobility allowance—

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

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