

---

STATUTORY INSTRUMENTS

---

**1991 No. 1712**

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

Disability working allowance

**Introduction of disability working allowance**

8.—(1) Article 21 (income-related benefits) of the 1986 Order shall be amended in accordance with paragraphs (2) to (7).

(2) In paragraph (1), after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(bb) disability working allowance;”.

(3) In paragraph (2) for the words “or (b)” there shall be substituted the words “, (b) or (bb)”.

(4) After paragraph (6) there shall be inserted the following paragraphs—

“(6A) A person in Northern Ireland who has attained the age of 16 and qualifies under paragraph (6B) is entitled to a disability working allowance if, when the claim for it is made or is treated as made—

- (a) he is engaged and normally engaged in remunerative work;
- (b) he has a physical or mental disability which puts him at a disadvantage in getting a job;
- (c) his income—
  - (i) does not exceed the applicable amount; or
  - (ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which Article 22(3B) provides is made; and
- (d) except in such circumstances as may be prescribed, neither he nor, if he has a family, any member of it, is entitled to family credit.

(6B) Subject to paragraph (6E), a person qualifies under this paragraph if—

- (a) for one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made there was payable to him one or more of the following—
  - (i) an invalidity pension under section 15 of the principal Act;
  - (ii) an invalidity pension under Article 17 or 18 of the Pensions Order;
  - (iii) a severe disablement allowance under section 36 of the principal Act;
  - (iv) income support or housing benefit;or a corresponding benefit under any statutory provision having effect in Great Britain;
- (b) when the claim for a disability working allowance is made or is treated as made, there is payable to him one or more of the following—
  - (i) an attendance allowance under section 35 of the principal Act;

- (ii) a disability living allowance under section 37ZA of that Act;
- (iii) an increase of disablement pension under section 61 of that Act (constant attendance allowance);
- (iv) an analogous pension increase under a war pension scheme or the industrial injuries regulations;

or a corresponding benefit under any statutory provision having effect in Great Britain; or

- (c) when the claim for a disability working allowance is made or is treated as made, he has 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.

(6C) For the purposes of paragraph (6A) a person has a disability which puts him at a disadvantage in getting a job only if he satisfies prescribed conditions or prescribed circumstances exist in relation to him.

(6D) In paragraph (6A)(c) “the applicable amount” means the applicable amount at such date as may be prescribed.

(6E) If the only benefit mentioned in sub-paragraph (a) of paragraph (6B) which is payable to a person as there mentioned is—

- (a) a benefit mentioned in head (iv) of that sub-paragraph; or
- (b) a corresponding benefit under any statutory provision having effect in Great Britain,

he only qualifies under that paragraph in prescribed circumstances.

(6F) A disability working allowance shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of a disability working allowance and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under Article 64.”

(5) In the application of paragraph (6B) of Article 21 to claims made or treated as made before the first day in respect of which disability living allowance is payable, sub-paragraph (b) of that paragraph shall have effect as if for head (ii) there were substituted the following head—

“(ii) a mobility allowance under section 37A of that Act;”.

(6) In paragraph (11)—

- (a) after the definition of “family” there shall be inserted the following definition—

““the industrial injuries regulations” means the regulations made under section 150 of the principal Act or under the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975;” and

- (b) after the definition of “unmarried couple” there shall be inserted the following definition—

““war pension scheme” means a scheme under which war pensions (as defined in section 25 of the Social Security Act 1989) are provided;”.

(7) In paragraph (12), after sub-paragraph (f) there shall be inserted the following sub-paragraph—

- “(ff) specifying the descriptions of pension increases under war pension schemes or the industrial injuries regulations that are analogous to the benefits mentioned in paragraph (6B)(b)(i) to (iii);”.

(8) In Article 22 of the 1986 Order (amount of income-related benefits), after paragraph (3) there shall be inserted the following paragraphs—

“(3A) Where a person is entitled to a disability working allowance by virtue of Article 21(6A)(c)(i), the amount shall be the amount which is the appropriate maximum disability working allowance in his case.

(3B) Where a person is entitled to a disability working allowance by virtue of Article 21(6A)(c)(ii), the amount shall be what remains after the deduction from the appropriate maximum disability working allowance of a prescribed percentage of the excess of his income over the applicable amount.”.

(9) In paragraph (6) of that Article, after sub-paragraph (a) there shall be inserted the following sub-paragraph—

“(aa) the appropriate maximum disability working allowance;”.

### **Disability working allowance—supplementary**

9.—(1) After Article 28A of the 1986 Order there shall be inserted the following—

“Disability working allowance

#### **Supplementary provisions about disability working allowance**

**28B.**—(1) In this Article—

“initial claim” means a claim for a disability working allowance made by a person—

- (a) to whom it has not previously been payable; or
- (b) to whom it has not been payable during the period of 2 years immediately preceding the date on which the claim is made or is treated as made; and

“repeat claim” means any other claim for a disability working allowance.

(2) On an initial claim a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is conclusive, except in such circumstances as may be prescribed, that for the purposes of Article 21(6A)(b) he has such a disability in accordance with regulations under Article 21(6C).

(3) If—

- (a) a repeat claim is made or treated as made not later than the end of the period of 8 weeks commencing with the last day of the claimant’s previous award; and
- (b) on the claim which resulted in that award he qualified under Article 21(6B) by virtue—
  - (i) of sub-paragraph (a) of that paragraph; or
  - (ii) of there being payable to him a benefit under a statutory provision having effect in Great Britain and corresponding to a benefit mentioned in that sub-paragraph,

all be treated on the repeat claim as if he still so qualified.

(4) Regulations may provide that an award of a disability working allowance to a person shall terminate if—

- (a) a disability working allowance becomes payable in respect of some other person who was a member of his family at the date of his claim for a disability working allowance; or

(b) income support or family credit becomes payable in respect of a person who was a member of the family at that date.”.

(2) Schedule 3 which makes further amendments shall have effect.

#### **Effect on entitlement to family credit of entitlement to disability working allowance**

**10.**—(1) In paragraph (5)(b) of Article 21 of the 1986 Order, after the words “remunerative work;” there shall be inserted the words—

“(bb) except in such circumstances as may be prescribed, neither he nor any member of his family is entitled to a disability working allowance;”.

(2) In paragraph (10)(b) of that Article, after the words “income support” there shall be inserted the words “or a disability working allowance”.

#### **Entitlement to other benefits after termination of entitlement to disability working allowance**

**11.**—(1) In section 15 of the principal Act (invalidity pension), after subsection (5) there shall be inserted the following subsections—

“(5A) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under this section having been payable to him; and
- (d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(5B) Any day other than a Sunday or a day prescribed under section 17(1)(e) below is a relevant day for the purposes of subsection (5A) above.”.

(2) In section 36 of that Act (severe disablement allowance), after subsection (6B) there shall be inserted the following subsection—

“(6C) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of a severe disablement allowance having been payable to him; and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and fails not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for a severe disablement allowance for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was both incapable of work and disabled.”.

(3) After Article 18 of the Pensions Order there shall be inserted the following Article—

**“Entitlement to invalidity pension after termination of entitlement to disability working allowance**

**18A.—**(1) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under Article 17 or 18 having been payable to him; and
- (d) the first relevant day after he ceases to be engaged as mentioned in sub-paragraph (a) is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in sub-paragraph (a) as having been a day on which he was incapable of work.

(2) Any day other than a Sunday or a day prescribed under section 17(1)(e) of the principal Act is a relevant day for the purposes of this Article.”.

(4) In Schedule 17 to the principal Act, at the end of the definition of “week” there shall be added the words “and except in relation to disability working allowance”.

(5) Where—

- (a) a person becomes entitled to an invalidity pension or a severe disablement allowance by virtue of section 15(5A) or 36(6C) of the principal Act or Article 18A of the Pensions Order; and
- (b) when he was last entitled to that pension or allowance, it was increased in respect of a dependant by virtue of—
  - (i) regulation 8(6) of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977;
  - (ii) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations (Northern Ireland) 1984;
  - (iii) regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1984; or
  - (iv) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) (Amendment) Regulations (Northern Ireland) 1989,

for the purpose of determining whether his pension or allowance should be increased by virtue of that regulation for any period beginning with the day on which he again becomes entitled to his pension or allowance, the increase in respect of that dependant shall be treated as having been payable to him on each day between the last day on which his pension or allowance was previously payable and the day on which he again becomes entitled to it.