

1992 No. 20

## SOCIAL SECURITY

**The Social Security (Attendance Allowance) Regulations  
(Northern Ireland) 1992**

*Made* . . . . . 20th January 1992

*Coming into operation* . . . . . 6th April 1992

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 35(1), (2)(b), (2A), (4A) and (6) and 85(1)(b) of the Social Security (Northern Ireland) Act 1975(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and shall come into operation on 6th April 1992.

(2) In these regulations—

“the Act” means the Social Security (Northern Ireland) Act 1975;

“the Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(b);

“the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991(c);

“terminally ill” has the same meaning as in section 35(2C) of the Act(d).

(3) Unless the context otherwise requires, any reference in these regulations to—

(a) 1975 c. 15; section 35(1) was amended by Article 3(1) of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17)). Section 35(2) was amended by Article 3(2) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 5(2) of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Section 35(2A) was inserted by Article 3(3) of the Social Security (Northern Ireland) Order 1979. Section 35(4A) was inserted by paragraph 8 of Part II of Schedule 1 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and amended by paragraph 5(4) of Schedule 8 to the Social Security (Northern Ireland) Order 1989 and paragraph 2(3) of Schedule 2 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Section 35(6) was amended by Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

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

(c) S.I. 1991/194 (N.I. 1)

(d) Section 35(2C) was inserted by Article 3(1) of the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))

- (a) a numbered section is a reference to the section of the Act bearing that number;
- (b) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that regulation bearing that number.

*Conditions as to residence and presence in Northern Ireland*

2.—(1) Subject to paragraphs (2) and (3), the prescribed conditions for the purposes of section 35(1) as to residence and presence in Northern Ireland in relation to any person on any day shall be that—

- (a) on that day—
  - (i) he is ordinarily resident in Northern Ireland,
  - (ii) he is present in Northern Ireland, and
  - (iii) he has been present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; and
- (b) where that day falls within a period in which that person—
  - (i) receives tax free emoluments, or
  - (ii) is the spouse of a person who receives tax free emoluments,
 that period is immediately preceded by a period of 4 years during which the person first mentioned in this sub-paragraph was present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 156 weeks;

and for the purpose of this provision “tax free emoluments” means emoluments which are exempt from tax under any of the provisions listed in regulation 11(1) of the Child Benefit (General) Regulations (Northern Ireland) 1979(a).

(2) For the purposes of paragraph (1)(a)(ii) and (iii), notwithstanding that on any day a person is absent from Northern Ireland, he shall be treated as though he were present in Northern Ireland if his absence is by reason only of the fact that on that day—

- (a) he is abroad in his capacity as—
  - (i) a serving member of the forces within the meaning of the definition of “serving member of the forces” in regulation 1(2) of the Social Security (Contributions) Regulations 1979(b),
  - (ii) an airman or mariner within the meaning of regulation 80 and regulation 84 respectively of the Social Security (Contributions) Regulations (Northern Ireland) 1979(c),

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(a) S.R. 1979 No. 5; to which there are amendments not relevant to these regulations

(b) S.I. 1979/591; to which there are amendments not relevant to these regulations

(c) S.R. 1979 No. 186; to which there are amendments not relevant to these regulations

- (b) he is in employment prescribed for the purposes of section 132 of the Social Security Act 1975(a) in connection with continental shelf operations;
- (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person;
- (d) his absence from Northern Ireland is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or
- (e) his absence from Northern Ireland is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Northern Ireland, and the Department has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Northern Ireland.

(3) Where a person is terminally ill and makes a claim for attendance allowance expressly on the ground that he is such a person, paragraph (1) shall apply to him as if sub-paragraph (a)(iii) were omitted.

#### *Extension of qualifying period*

3. The period prescribed for the purposes of section 35(2)(b) (claimant to satisfy one or both of the conditions in section 35(1) for 6 months immediately preceding the date from which attendance allowance is to be awarded) shall be 2 years.

#### *Entitlement before the date of claim in renewal cases*

4. Where—

- (a) a person has been entitled to an attendance allowance;
- (b) the period for which that allowance has been paid has ended; and
- (c) a claim for an attendance allowance has been made or treated as made within 6 months from the end of the period referred to in paragraph (b),

that person may be entitled to an attendance allowance for a period before the date of claim if he has satisfied the condition mentioned in paragraph (a) of section 35(1) or the condition mentioned in paragraph (b) of that subsection or both of those conditions, from the date on which the period referred to in paragraph (b) has ended until the date of claim.

#### *Renal dialysis*

5.—(1) Subject to paragraph (3), a person who suffers from renal failure and who is undergoing the treatment specified in paragraph (2) shall be deemed to satisfy the conditions—

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(a) 1975 c. 14; section 132(2) was amended by paragraph 21 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23)

- (a) in paragraph (a) of section 35(1) (severe physical or mental disability) if he undergoes renal dialysis by day;
  - (b) in paragraph (b) of section 35(1) if he undergoes renal dialysis by night;
  - (c) in either paragraph (a) or paragraph (b) of section 35(1), but not both, if he undergoes renal dialysis by day and by night.
- (2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—
- (a) 2 or more times a week; and
  - (b) which either—
    - (i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or
    - (ii) which, because of the particular circumstances of his case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the person undergoing renal dialysis or to supervise that person in order that he avoids substantial danger to himself.
- (3) Except as provided in paragraph (4), paragraph (1) does not apply to a person undergoing the treatment specified in paragraph (2) where that treatment—
- (a) is provided under the Order;
  - (b) is provided in a hospital or similar institution;
  - (c) is out-patient treatment; and
  - (d) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.
- (4) Paragraph (3) does not apply for the purposes of determining whether a person is to be taken to satisfy either of the conditions specified in paragraph (1) during the period of 6 months referred to in section 35(2)(b) (qualifying period for attendance allowance).

### *Hospitalisation*

6.—(1) Subject to regulation 8, it shall be a condition for the receipt of an attendance allowance for any period in respect of any person that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

- (a) in a hospital or similar institution maintained or administered under the Order;
- (b) in a hospital or similar institution in pursuance of arrangements made, or having effect as if made, by a Health and Social Services Board established under Article 16 of the Order, the Secretary of State or the Defence Council;
- (c) in a hospital or similar institution maintained or administered by the Defence Council or a Health and Social Services trust; or
- (d) in a hospital or similar institution in pursuance of arrangements made by a member of a recognised fund-holding practice.

(2) For the purposes of paragraph (1) a person shall only be regarded as not being maintained free of charge in a hospital or similar institution for any period where his accommodation and services are provided under Article 31 of the Order(a) or paragraph 14 of Schedule 3 to the 1991 Order.

(3) In this regulation—

“Health and Social Services trust” has the meaning assigned to it by Article 10 of the 1991 Order;

“recognised fund-holding practice” shall be construed in accordance with Article 17 of the 1991 Order.

*Persons in certain accommodation other than hospitals*

7.—(1) Except in the cases specified in paragraphs (2), (3) and (4) and subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a person for whom accommodation, not being accommodation to which regulation 6 refers, is provided—

(a) in pursuance of Article 5, 7, 15 or 36 of the Order(b);

(b) in circumstances where the cost of the accommodation is borne wholly or partly out of public or local funds in pursuance of that enactment or of any other enactment relating to persons under disability; or

(c) in circumstances where the cost of the accommodation may be borne wholly or partly out of public or local funds in pursuance of that enactment or of any other enactment relating to persons under disability.

(2) Paragraph (1)(c) shall not apply in the case of a person who is terminally ill where the Department has been informed of that fact—

(a) on a claim for an attendance allowance;

(b) on an application for a review of an award of attendance allowance; or

(c) in writing in connection with an award of, a claim for, or an application for a review of an award of, attendance allowance.

(3) Paragraph (1)(c) shall also not apply—

(a) where he is a person for whom accommodation is made available for his occupation in accordance with Article 10 of the Housing (Northern Ireland) Order 1988(c) (duties of the Executive to persons found to be homeless);

(b) where the person himself pays the whole cost, and always has paid the whole cost, of the accommodation; or

(c) except in a case to which paragraph (4) applies, where the accommodation the person is living in is a private dwelling.

(a) Article 31 was substituted by Article 3(9) of the Health and Medicines (Northern Ireland) Order 1988 (S.I. 1988/2249 (N.I. 24))

(b) Article 36 was amended by Article 11(2) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))

(c) S.I. 1988/1990 (N.I. 23)

(4) This paragraph applies where—

- (a) the cost of the accommodation the person previously occupied was borne in whole or in part out of public or local funds and where he was moved out of that accommodation at the instigation of the body which bore the cost into a home for persons in need; or
- (b) the person is living in a home for persons in need and at least 3 other persons in that home are provided with board and personal care, excluding persons carrying on the home or employed there or their relatives,

and for the purposes of this paragraph “home for persons in need” has the same meaning as in Article 2(2) of the Order<sup>(a)</sup>.

(5) In this regulation, references to the cost of the accommodation shall not include the cost of—

- (a) domiciliary services provided in respect of a person in a private dwelling;
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability;
- (c) improvements made to, or furniture or equipment provided for, residential homes or other homes or premises in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature;
- (d) social and recreational activities provided outside the accommodation in respect of which grants or payments are made out of public or local funds; or
- (e) the purchase or running of a motor vehicle to be used in connection with the accommodation in respect of which grants or payments are made out of public or local funds.

#### *Exemption from regulations 6 and 7*

**8.**—(1) Subject to paragraph (3), regulation 6 or, as the case may be, regulation 7 shall not apply to a person in respect of the first 28 days of any period throughout which he is—

- (a) undergoing medical or other treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 6; or
  - (b) in accommodation provided in any of the circumstances mentioned in regulation 7.
- (2) For the purposes of paragraph (1)—
- (a) 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period;

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(a) In Article 2(2), the definition of “home for persons in need” was amended by Schedule 2 to the Health and Personal Social Services (Northern Ireland) Order 1978

(b) any period or periods to which either regulation 6 or regulation 7 refers shall be taken into account and aggregated with any period to which the other of them refers.

(3) Where, on the day a person's entitlement to an attendance allowance commences, he is in accommodation in the circumstances mentioned in regulation 6 or regulation 7, paragraph (1) shall not apply to him for any period of consecutive days, beginning with that day, on which he remains in that accommodation.

### *Revocations*

9. The regulations specified in column (1) of the Schedule to these regulations are hereby revoked to the extent mentioned in column (3) of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 20th January 1992.

(L.S.)

*A. N. Burns*

Assistant Secretary

## Revocations

Column (1) <i>Citation</i>	Column (2) <i>Statutory Rule</i>	Column (3) <i>Extent of Revocation</i>
The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987	S.R. 1987 No. 413	The whole of the regulations
The Social Security (Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1988	S.R. 1988 No. 129	The whole of the regulations
The Social Security (Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1989	S.R. 1989 No. 352	The whole of the regulations
The Social Security (Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 93	The whole of the regulations
The Social Security (Attendance Allowance and Claims and Payments) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 340	Regulation 2 and the definition of "the Attendance Allowance Regulations" in regulation 1(2)
The Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 398	Regulation 5



*(This note is not part of the Regulations.)*

These regulations replace with amendments the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 413) and are consequential upon the changes made to attendance allowance by Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 which provides in particular that a person shall not be entitled to an attendance allowance unless he is aged 65 or over.

Regulation 2 sets out the conditions as to residence and presence in Northern Ireland which a person must satisfy to qualify for an attendance allowance.

Regulation 3 specifies when the qualifying period provided for in section 35(2)(b) of the Social Security (Northern Ireland) Act 1975 may occur when entitlement to an attendance allowance has been interrupted and regulation 4 provides for entitlement to an attendance allowance for a period before the date of claim in renewal cases.

Regulation 5 relates specifically to persons undergoing renal dialysis and provides that in certain circumstances such persons shall be entitled to an attendance allowance.

Regulations 6, 7 and 8 impose restrictions on the payment of benefit where a person is accommodated in hospital or is in certain accommodation where the cost is or may be met out of public or local funds.

Regulation 9, with the Schedule, specifies provisions which are to be revoked.

The regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.