
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (“the Attendance Allowance Regulations”) and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (“the Disability Living Allowance Regulations”) to:

- amend the past presence test so that a period of residence of 104 weeks out of the past 156 weeks is required in Northern Ireland before entitlement can be established to one of the benefits mentioned above;
- replace the ordinarily resident test with a habitual residence test;
- provide that serving members of Her Majesty’s Forces (and members of their families) are treated as habitually resident in Northern Ireland whilst stationed and serving abroad; and
- introduce a genuine and sufficient link provision for those arriving in Northern Ireland from another EEA state or Switzerland, or moving abroad to one of those states, as a result of a judgment of the European Court of Justice.

The Attendance Allowance Regulations and the Disability Living Allowance Regulations are also amended to:

- reduce the temporary absence rule from 26 to 13 weeks and provide for a maximum period of 26 weeks where the absence is for medical reasons;
- update references to reflect the equivalent references in current legislation; and
- revoke regulation 7(3)(f) of the Attendance Allowance Regulations and regulation 9(6)(f) of the Disability Living Allowance Regulations which stipulated that services provided to a resident of a care home pursuant to the Health and Personal Social Services (Northern Ireland) Order 1972 did not count as qualifying services. “Qualifying services” are defined in sections 67(4) (Attendance Allowance) and 72(10) (Disability Living Allowance) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as accommodation, board and personal care.

The Disability Living Allowance Regulations are further amended to:

- provide that from 6th December 2018 references to the upper age limit for claiming (65 years old) are to be read as references to “pensionable age” (within the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995) to reflect the equalisation of pensionable ages for men and women; and
- align the rules regarding the payability of the mobility component for all persons who enter hospital after 20th June 2016 and provide that those with a Motability contract who are hospital in-patients on or before 20th June 2016 will continue to be paid the mobility component until their Motability contract expires or until 20th June 2019, whichever is earliest.

Regulation 5 makes saving provision to ensure that the new temporary absence rules will only apply to people who are abroad on or before 20th June 2016 for medical treatment if they return to Northern Ireland or if the decision governing their current award is revised or superseded.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Pensions, 20 Caxton House, Tothill Street, London, SN1 9NA. It is also available alongside this instrument and the explanatory memorandum on www.legislation.gov.uk.