

2016 No. 229

SOCIAL SECURITY

**The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations
(Northern Ireland) 2016**

Made - - - - *3rd May 2016*

Laid before Parliament *10th May 2016*

Coming into operation in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 64(1), 67(2), 70(4), 71(6), 72(8), 113(1)(a) and (2), 121(1) and 171(1), (3)(a), (b)(ii) and (iii), and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and sections 71(1)(b) and 165(1) of the Social Security Administration (Northern Ireland) Act 1992(b).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations (Northern Ireland) 2016 and, subject to paragraph (2), come into operation on 20th June 2016.

(2) In the case of a person who has an existing award on 19th June 2016—

(a) regulations 2(2)(a)(ii), 3(2)(a)(ii) and 4(3)(a)(ii) come into operation—

(i) on the day immediately following the termination day; or

(ii) on the day on which the first revision or supersession is made on or after 20th June 2016,

whichever is earlier;

(b) regulations 2(2)(a)(iii), 3(2)(a)(iii) and 4(3)(a)(iii) come into operation—

(a) 1992 c. 7. Section 64(1) was amended by paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and is amended by paragraph 4(2) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)), sections 67(2) and 72(8) were substituted by section 54 of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21). Section 121(1) is cited for the meaning it gives to 'prescribe'.

(b) 1992 c. 8. Section 71(1) was amended by paragraph 32(2) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 4(7)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7).

(c) S.I. 2015/2006 (N.I. 1).

- (i) on the day immediately following the termination day; or
 - (ii) 104 weeks after 20th June 2016,
- whichever is earlier;
- (c) regulations 3(2)(c) and 4(3)(c) come into operation—
 - (i) on the day immediately following the termination day; or
 - (ii) 26 weeks after 20th June 2016,
 whichever is earlier.
- (3) In these Regulations—
- “the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “existing award” means an award of—
- (a) attendance allowance under section 64 of the Contributions and Benefits Act(a);
 - (b) carer’s allowance under section 70 of that Act(b); or
 - (c) disability living allowance under section 71 of that Act(c);
- “revision” means a revision under Article 10 of the Social Security (Northern Ireland) Order 1998(d);
- “supersession” means a supersession under Article 11 of the Social Security (Northern Ireland) Order 1998(e);
- “termination day” means the day on which the existing award terminates.

Amendment of the Social Security (Invalid Care Allowance) Regulations

2.—(1) The Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(f) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 9 (conditions relating to residence and presence in Northern Ireland)—
- (a) in paragraph (1)(g)—
 - (i) after “this regulation” insert “and regulations 9A and 9B of these regulations”;
 - (ii) in sub-paragraph (a), for “ordinarily resident in Northern Ireland”, substitute “habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands”; and
 - (iii) in sub-paragraph (c), for “26 weeks in the 12 months”, substitute “104 weeks in the 156 weeks”; and
 - (b) for paragraph (3)(h) substitute—

“(3) Notwithstanding that on any day a person is absent from Northern Ireland, he shall be treated as though he were—

(a) Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 and paragraph 4 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(b) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370, Articles 2(2) and 3 of S.R. 2002 No. 321, regulation 2(3) of S.R. 2011 No. 356, Article 2(2) of S.I. 2013/3233 and is amended by regulation 5(2) of S.R. 2016 No. 228.

(c) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(d) S.I. 1998/1506 (N.I. 10).

(e) Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

(f) S.R. 1976 No. 99. Relevant amending Regulations are S.R. 1977 No. 73, S.R. 1996 Nos. 11 and 521, S.R. 2000 No. 71, S.R. 2002 No. 323 and S.R. 2005 No. 536.

(g) Paragraph (1) was amended by regulation 2(a) of S.R. 1996 No. 11, regulation 2(8) of S.R. 1996 No. 521, regulation 3(a) of S.R. 2000 No. 71 and paragraph 1 of the Schedule to S.R. 2002 No. 323.

(h) Paragraph (3) was substituted by regulation 17 of S.R. 1977 No. 73 and amended by paragraph 5 of Schedule 3 to S.R. 2005 No. 536.

- (a) habitually resident and present in Northern Ireland for the purposes of paragraphs (1)(a) to (c) if—
 - (i) his absence is by reason only of the fact that on that day he is abroad in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the Social Security (Contributions) Regulations 2001^(a) (“the 2001 Regulations”); or
 - (ii) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person; and
 - (b) present in Northern Ireland for the purposes of paragraph (1)(b) and (c) of this regulation if his absence is by reason only of the fact that on that day he is—
 - (i) abroad in his capacity as an airman within the meaning of regulation 111 of the 2001 Regulations or a mariner within the meaning of regulation 115 of those Regulations; or
 - (ii) in prescribed employment in connection with continental shelf operations within the meaning of regulation 114(1) of the 2001 Regulations.”.
- (3) After regulation 9 insert—

“Persons residing in Northern Ireland to whom a relevant EU Regulation applies

9A.—(1) Regulation 9(1)(c) of these regulations shall not apply where on any day—

- (a) the person is habitually resident in Northern Ireland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) of this regulation and regulation 9B of these regulations, “relevant EU Regulation” has the meaning given by Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015^(b).

Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies

9B. Regulation 9(1)(a) to (c) of these regulations shall not apply where on any day—

- (a) the person is habitually resident in—
 - (i) an EEA state other than the United Kingdom; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.”.

Amendment of the Social Security (Attendance Allowance) Regulations

3.—(1) The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992^(c) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (conditions as to residence and presence in Northern Ireland)—

- (a) in paragraph(1)^(d)—

(a) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.
 (b) S.I. 2015/2006 (N.I. 1).
 (c) S.R. 1992 No. 20. Relevant amending Regulations are S.R. 1994 No. 263, S.R. 1997 No. 69, S.R. 2000 No. 71 and S.R. 2007 No. 431.
 (d) Paragraph (1) was amended by regulation 2 of S.R. 1997 No. 69 and regulation 8(a) of S.R. 2000 No. 71.

- (i) after “this regulation” insert “and regulations 2A and 2B”;
- (ii) in sub-paragraph (a)(i), for “ordinarily resident in Northern Ireland”, substitute “habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands”; and
- (iii) in sub-paragraph (a)(iii), for “26 weeks in the 52”, substitute “104 weeks in the 156”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a)(i), for “the Social Security (Contributions) Regulations 1979”, substitute “the Social Security (Contributions) Regulations 2001 (“the 2001 Regulations”)”; and
 - (ii) in sub-paragraph (a)(ii), for “regulation 80” to the end, substitute “regulation 111 and regulation 115 respectively of the 2001 Regulations,”;
- (c) for paragraph (2)(d), substitute—
 - “or
 - (d) he is temporarily absent from Northern Ireland and that absence has not lasted for a continuous period exceeding 13 weeks.”;
- (d) omit paragraph (2)(e) and the preceding “or”;
- (e) after paragraph (3) add—
 - “(4) A person shall be treated as habitually resident in Northern Ireland for the purpose of paragraph (1)(a)(i) where—
 - (a) he is resident outside Northern Ireland in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the 2001 Regulations; or
 - (b) he is living with a person mentioned in sub-paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.”;
- (f) after new paragraph (4) add—
 - “(5) Where a person is temporarily absent from Northern Ireland, he is treated as present in Northern Ireland for the purposes of paragraph (1)(a)(ii) and (iii) for the first 26 weeks of that absence, where—
 - (a) this absence is solely in connection with arrangements made for the medical treatment of him for a disease or bodily or mental disablement which commenced before he 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 he is temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and
 - “medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly.”;
- (g) after new paragraph (5) add—
 - “(6) For the purpose of paragraphs (2)(d) and (5) a person is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.”.
- (3) After regulation 2 insert—

“Persons residing in Northern Ireland to whom a relevant EU Regulation applies

2A.—(1) Regulation 2(1)(a)(iii) shall not apply where on any day—

- (a) the person is habitually resident in Northern Ireland;

- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) and regulation 2B, “relevant EU Regulation” has the meaning given by Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015.

Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies

2B. Regulation 2(1)(a)(i) to (iii) shall not apply where on any day—

- (a) the person is habitually resident in—
 - (i) an EEA state other than the United Kingdom; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.”.

(4) In regulation 7(a) (persons in care homes)—

- (a) in paragraph (2)—
 - (i) omit “or” at the end of sub-paragraph (b); and
 - (ii) after sub-paragraph (b), insert—
 - “(ba) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002**(b)**; or”;
 - and
- (b) in paragraph (3)—
 - (i) after sub-paragraph (d), insert “or”; and
 - (ii) omit sub-paragraph (f) and the preceding “or”.

(5) In regulation 8A(c) (adjustment of allowance where medical expenses are paid from public funds under war pensions instruments)—

- (a) in paragraph (1)—
 - (i) before the definition of “article 25B”, insert—
 - ““article 21” means article 21 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006**(d)** (medical expenses);”;
 - (ii) omit the definition of “article 26”; and
 - (iii) in the definition of “relevant accommodation” for “article 25B or article 26”, substitute “article 21 or article 25B”; and
- (b) in paragraph (3), for “article 25B or article 26”, in both places, substitute “article 21 or article 25B”.

Amendment of the Social Security (Disability Living Allowance) Regulations

4.—(1) The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992**(e)** are amended in accordance with paragraphs (2) to (8).

(2) In regulation 1 (citation, commencement and interpretation) after paragraph (3) insert—

“(3A) With effect from 6th December 2018, any reference in these Regulations to—

(a) Regulation 7 was substituted by regulation 2(2) of S.R. 2007 No. 431.
 (b) 2002 c. 6 (N.I.).
 (c) Regulation 8A was inserted by regulation 2(4) of S.R. 1994 No. 263.
 (d) S.I. 2006/606. Article 21 was amended by article 4 of S.I. 2006/1455.
 (e) S.R. 1992 No. 32. Relevant amending Rules are S.R. 1993 No. 340, S.R. 1994 No. 263, S.R. 1996 Nos. 11, 225 and 290, S.R. 1997 No. 69, S.R. 1999 No. 428 (C. 32), S.R. 2000 No. 71 and S.R. 2007 No. 431.

- (a) “the age of 65 years” and “the age of 65” shall be construed as a reference to “pensionable age”; and
- (b) “aged 65 or over” and “aged 65 and over” shall be construed as a reference to “of pensionable age”.

(3B) For the purpose of paragraph (3A), “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(a).”.

(3) In regulation 2 (conditions as to residence and presence in Northern Ireland)—

- (a) in paragraph (1)(b)—
 - (i) after “this regulation” insert “ and regulations 2A and 2B”;
 - (ii) in sub-paragraph (a)(i), for “ordinarily resident in Northern Ireland”, substitute “habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands”; and
 - (iii) in sub-paragraph (a)(iii), for “26 weeks in the 52”, substitute “104 weeks in the 156”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a)(i), for “the Social Security (Contributions) Regulations 1979”, substitute “the Social Security (Contributions) Regulations 2001 (“the 2001 Regulations”)”; and
 - (ii) in sub-paragraph (a)(ii), for “regulation 80” to the end, substitute “regulation 111 and regulation 115 respectively of the 2001 Regulations;”;
- (c) for paragraph (2)(d), substitute—
 - “or
 - (d) he is temporarily absent from Northern Ireland and that absence has not lasted for a continuous period exceeding 13 weeks.”;
- (d) omit paragraph (2)(e) and the preceding “or”;
- (e) after paragraph (2), insert—
 - “(2A) A person shall be treated as habitually resident in Northern Ireland for the purpose of paragraph (1)(a)(i) where—
 - (a) he is resident outside Northern Ireland in his capacity as a serving member of the forces and for this purpose “serving member of the forces” has the meaning given in regulation 1(2) of the 2001 Regulations; or
 - (b) he is living with a person mentioned in sub-paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.”;
- (f) after new paragraph (2A) insert—
 - “(2B) Where a person is temporarily absent from Northern Ireland, he is treated as present in Northern Ireland for the purposes of paragraph (1)(a)(ii) and (iii) for the first 26 weeks of that absence, where—
 - (a) this absence is solely in connection with arrangements made for the medical treatment of him for a disease or bodily or mental disablement which commenced before he 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 he is temporarily absent from Northern Ireland, and

(a) S.I. 1995/3213 (N.I. 22). Paragraph 1 was amended by paragraph 28 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 8 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 4 of Schedule 3 to the Pensions Act (Northern Ireland) 2008, section 1 of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and section 26 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)).

(b) Paragraph (1) was amended by regulation 2(3)(a) of S.R. 1993 No. 340, regulation 9(a) of S.R. 1996 No. 11, regulation 3(2) of S.R. 1997 No. 69 and regulation 9(a) of S.R. 2000 No. 71.

(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly.”;

(g) after new paragraph (2B) insert—

“(2C) For the purpose of paragraph (2)(d) and (2B) a person is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.”;

(h) in paragraphs (4) and (5) for “26” substitute “104”; and

(i) after paragraph (5) insert—

“(6) Paragraph (1) shall apply in the case of a child who is over the age of 6 months but who has not exceeded the age of 36 months as if in sub-paragraph (a)(iii) for the reference to 104 weeks there were substituted a reference to 26 weeks.”.

(4) After regulation 2 insert—

“Persons residing in Northern Ireland to whom a relevant EU Regulation applies

2A.—(1) Regulation 2(1)(a)(iii) shall not apply where on any day—

- (a) the person is habitually resident in Northern Ireland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) and regulation 2B, “relevant EU Regulation” has the meaning given by Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015.

Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies

2B. Regulation 2(1)(a)(i) to (iii) shall not apply in relation to the care component where on any day—

- (a) the person is habitually resident in—
 - (i) an EEA state other than the United Kingdom; or
 - (ii) Switzerland;
- (b) a relevant EU Regulation applies; and
- (c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.”.

(5) In regulation 9(a) (persons in care homes)—

(a) in paragraph (2)—

- (i) omit “or” at the end of sub-paragraph (b);
- (ii) after sub-paragraph (b) insert—

“(ba) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002; or”;

(b) in paragraph (3) omit sub-paragraph (b); and

(c) in paragraph (6) omit sub-paragraph (f) and the preceding “or”.

(6) In regulation 10A(b) (adjustment of allowance where medical expenses are paid from public funds under war pensions instruments)—

(a) Regulation 9 was substituted by regulation 3(2) of S.R. 2007 No. 431.

(b) Regulation 10A was inserted by regulation 3(4) of S.R. 1994 No. 263.

- (a) in paragraph (1)—
 - (i) before the definition of “article 25B”, insert—
 - ““article 21” means article 21 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (medical expenses);”;
 - (ii) omit the definition of “article 26”; and
 - (iii) in the definition of “relevant accommodation” for “article 25B or article 26”, substitute “article 21 or article 25B”; and
- (b) in paragraph (3) for “article 25B or article 26” in both places substitute “article 21 or article 25B”.

(7) In regulation 12B(a) (exemption from regulation 12A)—

- (a) in paragraph (3) for “(1) and (4)”, substitute “(1), (4), (7), (8) and (8A)”;
- (b) for paragraphs (7) to (9) substitute—

“(7) Subject to regulation 12C, where on 20th June 2016, paragraph (10) applies to a person and a Motability agreement entered into by or on behalf of that person is in force, regulation 12A shall, for the period following that referred to in paragraph (1)(a) or, as the case may be, paragraph (1)(b), continue not to apply to that person for the period that terminates in accordance with paragraph (8).

(8) The period referred to in paragraph (7) terminates—

- (a) on the first day after 20th June 2016 on which paragraph (10) first ceases to apply to the person for more than 28 consecutive days;
- (b) in accordance with paragraph (8A); or
- (c) on 20th June 2019,

whichever is the earliest.

(8A) The period referred to in paragraph (8)(b) terminates—

- (a) in the case of the hire of a vehicle—
 - (i) where the vehicle is returned to the owner before the expiration of the current term of hire, on the date that the vehicle is returned to the owner;
 - (ii) where the vehicle is returned to the owner at the expiration of the current term of hire, on expiry of the current term of hire;
 - (iii) where the vehicle is retained with the owner’s consent by or on behalf of the person after the expiration of the current term of hire, on expiry of the current term of hire;
 - (iv) where the vehicle is retained otherwise than with the owner’s consent by or on behalf of the person after the expiration of the current term of hire, on expiry of the current term of hire; or
 - (v) where the vehicle is retained otherwise than with the owner’s consent by or on behalf of the person after the date of an early termination of the current term of hire, on the date of that early termination; and
- (b) in the case of a hire-purchase agreement—
 - (i) on the purchase of the vehicle;
 - (ii) where the vehicle is returned to the owner under the terms of the agreement before the completion of the purchase, on the date that the vehicle is returned to the owner; or
 - (iii) where the vehicle is repossessed by the owner under the terms of the agreement before the completion of the purchase, on the date of repossession.

(a) Regulation 12B was inserted by regulation 4(3) of S.R. 1996 No. 225 and amended by regulation 2 of S.R. 1996 No. 290 and Article 7(4) of S.R. 1999 No. 428 (C. 32).

(8B) In paragraph (8A)(a) the “current term of hire” means the last term of hire that was agreed on or before 20th June 2016 but does not include any extension of that last term of hire after 20th June 2016.”.

(8) In paragraph 4(1)(b) of Schedule 1 (persons aged 65 and over), for “section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977 or section 46(1) of the National Health Service (Scotland) Act 1978”, substitute “section 46(1) of the National Health Service (Scotland) Act 1978(a), paragraph 9 of Schedule 1 to the National Health Service Act 2006(b) or paragraph 9 of Schedule 1 to the National Health Service (Wales) Act 2006(c)”.

Saving

5.—(1) Where paragraph (2) applies to a person—

- (a) regulation 2(2)(e) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992; or
- (b) regulation 2(2)(e) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992,

shall continue to have effect in relation to that person as if regulation 3(2)(d) and (f) and regulation 4(3)(d) and (f) respectively, had not been made until the earlier of the events specified in paragraph (3) takes place.

(2) This paragraph applies to a person—

- (a) who, on 20th June 2016, is absent from Northern Ireland;
- (b) whose absence is temporary and for the specific purpose of being treated for incapacity, or a disabling condition, which commenced before that person left Northern Ireland; and
- (c) in respect of whom, before 20th June 2016 the Department had certified that it was consistent with the proper administration of the Contributions and Benefits Act that, subject to the satisfaction of the condition in sub-paragraph (b), that person should be treated as though present in Northern Ireland.

(3) The events specified for the purpose of paragraph (1) are either that—

- (a) the person referred to in paragraph (2) returns to Northern Ireland; or
- (b) the first revision or supersession after 20th June 2016 is made in respect of that person’s award.

Signed by authority of the Secretary of State for Work and Pensions.

Justin Tomlinson
Parliamentary Under Secretary of State,
Department for Work and Pensions

3rd May 2016

(a) 1978 c. 29.
(b) 2006 c. 41.
(c) 2006 c. 42.

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.

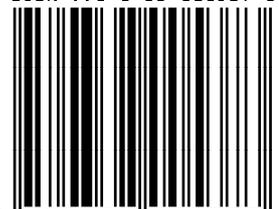
An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 20 Caxton House, Tothill Street, London, SN1 9NA. It is also available alongside this instrument and the explanatory memorandum on www.legislation.gov.uk.

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