

1992 No. 32**SOCIAL SECURITY****The Social Security (Disability Living Allowance)
Regulations (Northern Ireland) 1992***Made* 27th January 1992*Coming into operation* 6th April 1992

ARRANGEMENT OF REGULATIONS

PART I

INTRODUCTION

1. Citation, commencement and interpretation

PART II

GENERAL

2. Conditions as to residence and presence in Northern Ireland
3. Persons aged 65 and over
4. Rate of benefit
5. Late claim by a person previously entitled to benefit

PART III

CARE COMPONENT

6. Qualifying period for the care component after an interval
7. Renal dialysis
8. Hospitalisation
9. Persons in certain accommodation other than hospitals
10. Exemption from regulations 8 and 9

PART IV

MOBILITY COMPONENT

11. Qualifying period for the mobility component after an interval
12. Entitlement to the mobility component
13. Invalid vehicle scheme
14. Revocations

SCHEDULE 1 — Persons aged 65 and over

SCHEDULE 2 — Invalid vehicle scheme

SCHEDULE 3 — Revocations

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 37ZA(6), 37ZB(2), (3), (7) and (8), 37ZC(2), (5), (6), (9) and (10), 37ZD, 37ZE(2), 85(1) and 114(1) of, and Schedule 17 to, the Social Security (Northern Ireland) Act 1975(a), Article 10 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(b) and Article 7(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991(c) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Disability Living 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(d);

“the 1968 Act” means the Children and Young Persons Act (Northern Ireland) 1968(e);

“the 1977 Order” means the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977;

“the 1986 Order” means the Social Security (Northern Ireland) Order 1986(f);

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

-
- (a) 1975 c. 15; sections 37ZA to 37ZE were inserted by Article 3(2) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17)). Section 85(1) was amended by paragraph 29 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 (S.I. 1975/1504 (N.I. 16)). Schedule 17 is cited because of the power conferred in the meaning of the expression “Child”, as substituted by paragraph 37 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975
- (b) S.I. 1977/610 (N.I. 11); Article 10 was amended by paragraph 28(c) of Schedule 3 to the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) and by paragraph 7 of Schedule 2 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991
- (c) S.I. 1991/1712 (N.I. 17)
- (d) S.I. 1972/1265 (N.I. 14)
- (e) 1968 c. 34
- (f) S.I. 1986/1888 (N.I. 18)
- (g) S.I. 1991/194 (N.I. 1)

“adjudicating authority” means, as the case may be, the Chief Adjudication Officer appointed under section 97(1B)(a), any other adjudication officer appointed under section 97(1)(a), a social security appeal tribunal constituted under section 97(2) to (2E)(a) or a disability appeal tribunal constituted under Schedule 10A(b);

“care component” means the care component of a disability living allowance;

“mobility component” means the mobility component of a disability living allowance;

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

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

(a) a numbered section is a reference to the section of the Act bearing that number;

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

(4) The Interpretation Act 1978(d) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

PART II

GENERAL

Conditions as to residence and presence in Northern Ireland

2.—(1) Subject to paragraphs (2) to (5), the prescribed conditions for the purposes of section 37ZA(6) 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

(a) Section 97(1) to (2E) was substituted by paragraph 1 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17)); section 97(1) was amended by paragraph 3(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)); section 97(2A) and (2B) was substituted by Article 10(a) of the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8))

(b) Schedule 10A was inserted by paragraph 16 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(c) Section 35(2C) was inserted by Article 3(1) of the Social Security (Northern Ireland) Order 1990

(d) 1978 c. 30

- (b) where that day falls within a period in which that person—
- (i) receives tax free emoluments,
 - (ii) is the spouse of a person who receives tax free emoluments, or
 - (iii) is aged under 16 and is the son, daughter, step-son or step-daughter 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 “serving member of the forces” in regulation 1(2) of the Social Security (Contributions) Regulations 1979(b), or
 - (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);
- (b) he is in employment prescribed for the purposes of section 132 of the Social Security Act 1975(d) 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.

(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

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

(3) Where a person is terminally ill and—

(a) makes a claim for disability living allowance; or

(b) an application is made for a review of his award of disability living 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.

(4) Paragraph (1) shall apply in the case of a child under the age of 6 months as if in sub-paragraph (a)(iii) for the reference to 26 weeks there were substituted a reference to 13 weeks.

(5) Where in any particular case a child has, by virtue of paragraph (4), entitlement to the care component immediately before the day on which he attains the age of 6 months, then until the child attains the age of 12 months, paragraph (1)(a)(iii) shall continue to apply in his case as if for the reference to 26 weeks there were substituted a reference to 13 weeks.

Persons aged 65 and over

3.—(1) A person shall not be precluded from entitlement to either component of disability living allowance by reason only of the fact that he has attained the age of 65, where—

(a) disability living allowance is claimed for a period beginning on or after the day on which the person attains the age of 65 but before he attains the age of 66;

(b) on the day before he attained the age of 65, he satisfied the conditions as to residence and presence in Northern Ireland set out in regulation 2;

(c) on that day, he satisfied the conditions of entitlement in section 37ZB(1) (care component) or, as the case may be, section 37ZC(1) (mobility component); and

(d) he has satisfied those conditions throughout the period beginning on that day and ending with the day on which the claim is made.

(2) Paragraph (3) applies to a person who—

(a) made a claim for disability living allowance before he attained the age of 65, which was not determined before he attained that age; and

(b) did not at the time he made the claim have an award of disability living allowance for a period ending on or after the day on which he attained the age of 65.

(3) In determining the claim of a person to whom this paragraph applies, where the person otherwise satisfies the conditions of entitlement to either or both components of disability living allowance for a period commencing before he attains the age of 65 (other than the requirements of section 37ZB(2)(a) or, as the case may be, section 37ZC(9)(a) (3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.

(4) Schedule 1, which makes further provision for persons aged 65 and over, shall have effect.

Rate of benefit

4.—(1) The three weekly rates of the care component are—

- (a) the highest rate, payable in accordance with section 37ZB(4)(a), £43·35;
- (b) the middle rate, payable in accordance with section 37ZB(4)(b), £28·95; and
- (c) the lowest rate, payable in accordance with section 37ZB(4)(c), £11·55.

(2) The two weekly rates of the mobility component are—

- (a) the higher rate, payable in accordance with section 37ZC(11)(a), £30·30; and
- (b) the lower rate, payable in accordance with section 37ZC(11)(b), £11·55.

Late claim by a person previously entitled to benefit

5.—(1) Notwithstanding section 37ZE(1) (no entitlement to disability living allowance for any day before a claim is made), where—

- (a) a person's entitlement to disability living allowance has ended; and
- (b) that person makes or is treated as making a claim for disability living allowance after the entitlement has ended but within a period of 6 months immediately following the day on which it ended,

then that person shall, subject to satisfying any other conditions of entitlement, be entitled to the care component for any day on or after 6th April 1992 on which he satisfies the conditions specified in paragraph (2)(a) and to the mobility component for any day on or after that day on which he satisfies the conditions specified in paragraph (2)(b).

(2) For the purposes of paragraph (1), those conditions are—

- (a) where the person is entitled on the claim for disability living allowance to the care component, that—
 - (i) the previous entitlement was to the care component,
 - (ii) that entitlement ended within 6 months of the claim being made,
 - (iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day on which the claim was made, he satisfied the conditions of entitlement to the care component specified in section 37ZB(1)(a), (b) or (c), and
 - (iv) the day in question falls within that period;
- (b) where the person is entitled on the claim for disability living allowance to the mobility component, that—
 - (i) the previous entitlement was to the mobility component,
 - (ii) that entitlement ended within 6 months of the claim being made,
 - (iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day on which the claim was made, he satisfied the conditions of

entitlement to the mobility component specified in section 37ZC(1)(a), (b), (c) or (d), and

(iv) the day in question falls within that period.

(3) Where a person has been entitled for any period before 6th April 1992 to attendance allowance or mobility allowance, then—

- (a) the reference in paragraph (1)(a) to entitlement to disability living allowance includes also a reference to entitlement to attendance allowance or mobility allowance; and
- (b) the reference in paragraph (2)(a)(i) to entitlement to the care component includes also a reference to entitlement to attendance allowance and the reference in paragraph (2)(b)(i) to entitlement to the mobility component includes also a reference to entitlement to mobility allowance.

PART III

CARE COMPONENT

Qualifying period for the care component after an interval

6.—(1) The period prescribed for the purposes of section 37ZB(2)(a)(ii) is a period of 3 months ending on the day on which the person was last entitled to the care component or to attendance allowance where that day falls not more than 2 years before the date on which entitlement to the care component would begin, or would have begun but for any regulations made under Article 52(1)(l) of the 1986 Order (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

(2) Except in a case to which paragraph (3) applies, this regulation shall apply to a person to whom paragraph 3 or 7 of Schedule 1 refers as if for the reference to 3 months in paragraph (1) there were substituted a reference to 6 months.

(3) Paragraph (1) and not paragraph (2), shall apply to those persons referred to in paragraph (2) who, on the day before they attained the age of 65, had already completed the period of 3 months referred to in paragraph (1).

(4) For the purposes of paragraph (3), the modification made in paragraphs 3(2) and 7(2) of Schedule 1, to section 37ZB(2)(a) (qualifying period for the care component) shall be treated as not having been made.

Renal dialysis

7.—(1) A person who suffers from renal failure and falls within the provisions of paragraph (2) shall be taken to satisfy the conditions—

- (a) in paragraph (b) of section 37ZB(1) (severe physical or mental disability) where he undergoes renal dialysis by day;
- (b) in paragraph (c) of section 37ZB(1) where he undergoes renal dialysis by night;
- (c) in either paragraph (b) or paragraph (c) of section 37ZB(1), but not both, where he undergoes renal dialysis by day and by night.

(2) Subject to paragraph (3), a person falls within the provisions of this paragraph—

(a) if—

- (i) he undergoes renal dialysis 2 or more times a week, and
- (ii) the renal dialysis which he undergoes is of a type which normally requires the attendance or supervision of another person during the period of the dialysis, or
- (iii) because of the particular circumstances of his case, he in fact requires another person during the period of dialysis to attend in connection with his bodily functions, or to supervise him during the period of the dialysis, in order that he avoids substantial danger to himself; and

(b) if, where he undergoes renal dialysis as an out-patient in a hospital or similar institution, being treatment provided under the Order, no member of the staff of that hospital or institution assists with or supervises that dialysis.

(3) Paragraph (2)(b) does not apply for the purpose of determining whether a person is to be taken to satisfy any of the conditions mentioned in paragraph (1) during the period of 3 months referred to in section 37ZB(2)(a)(i).

(4) Except to the extent that provision is made in paragraph (2)(b), a person who undergoes treatment by way of renal dialysis as an out-patient in a hospital or similar institution, being treatment provided under the Order, shall not be taken solely by reason of the fact that he undergoes such dialysis as satisfying any of the conditions mentioned in section 37ZB(1)(a) to (c).

Hospitalisation

8.—(1) Subject to regulation 10, it shall be a condition for the receipt of disability living allowance which is attributable to entitlement to the care component 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 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, in a hospital or similar institution;
- (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 during any period when his accommodation and services are provided under Article 31 of the Order(a) or paragraph 14 of Schedule 3 to the 1991 Order.

(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))

(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” means a practice to be construed in accordance with Article 17 of the 1991 Order.

Persons in certain accommodation other than hospitals

9.—(1) Except in the cases specified in paragraphs (2) and (4) and, for the purposes of sub-paragraph (b), paragraph (5), and for the purposes of sub-paragraph (c), paragraphs (5) to (7), and subject to regulation 10, a person shall not be paid any amount in respect of disability living allowance which is attributable to entitlement to the care component for any period where throughout that period he is a person for whom accommodation, not being accommodation to which regulation 8 refers, is provided—

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

(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 to young persons or to education or training; 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 or to young persons or to education or training.

(2) Paragraph (1) shall not apply in the case of a child—

(a) who has not attained the age of 16 and is in the care of a Health and Social Services Board or the Department; or

(b) who has not attained the age of 18 and—

(i) whose health or development is likely to be significantly impaired, or further impaired, without the provision for him of services by a Health and Social Services Board or the Department, or

(ii) who is disabled,

during any period during which the Health and Social Services Board or the Department, in whose care the child is, place him in a private dwelling with a family, or a relative of his, or some other suitable person.

(3) For the purposes of paragraph (2), a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity and in this regulation—

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

(a) 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))

(4) Paragraph (1) shall also not apply in the case of a child who is accommodated outside the United Kingdom where the cost of the accommodation is or may be borne wholly or partly by a Health and Social Services Board or the Department pursuant to their powers under Article 31(3) of the Education and Libraries (Northern Ireland) Order 1986(a).

(5) Paragraph (1)(b) and (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 the care component;
 - (b) on an application for a review of an award of disability living allowance; or
 - (c) in writing in connection with an award of, a claim for, or an application for a review of an award of, disability living allowance.
- (6) Paragraph (1)(c) shall also not apply—
- (a) where the person is living in accommodation as a privately fostered child;
 - (b) 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(b) (duties of the Executive to persons found to be homeless);
 - (c) where the person himself pays the whole cost, and has always paid the whole cost, of the accommodation; or
 - (d) except in a case to which paragraph (7) applies, where the accommodation the person is living in is a private dwelling,

and for the purposes of this paragraph “privately fostered child” shall be construed in accordance with the provisions of Part I of the 1968 Act(c).

(7) 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(d).

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

(a) S.I. 1986/594 (N.I. 3)

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

(c) Part I was amended by Part II of Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), Schedule 5 to the Insurance Companies Act 1982 (c. 50) and Schedule 4 to, and Part II of Schedule 5 to, the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22))

(d) 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

- (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 8 and 9

10.—(1) Subject to paragraphs (2) and (3), regulation 8 or, as the case may be, regulation 9, shall not apply to a person for the first 28 days of any period throughout which he is someone to whom paragraph (4) refers.

(2) Subject to paragraph (3), regulation 8 shall not apply to a person who has not attained the age of 16 for the first 84 days of any period throughout which he is someone to whom paragraph (4) refers.

(3) Where on the day on which the person's entitlement to the care component commenced, he is a person to whom paragraph (4) refers, then paragraph (1) or, as the case may be, paragraph (2) shall not apply to him for any period of consecutive days, beginning with that day, in which he continues to be a person to whom paragraph (4) refers.

(4) This paragraph refers to a person who—

- (a) is undergoing medical or other treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 8; or
- (b) is in accommodation provided in any of the circumstances mentioned in regulation 9.

(5) For the purposes of paragraphs (1) and (2)—

- (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;
- (b) any period or periods to which regulation 8(1) or 9(1) refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

MOBILITY COMPONENT

Qualifying period for the mobility component after an interval

11. The period prescribed for the purposes of section 37ZC(9)(a)(ii) is a period of 3 months ending on the day on which the person was last entitled to the mobility component or to mobility allowance, where that day falls not more than 2 years before the date on which entitlement to the mobility component would begin, or would have begun but for any regulations made under Article 52(1)(l) of the 1986 Order.

Entitlement to the mobility component

12.—(1) A person is to be taken to satisfy the conditions mentioned in section 37ZC(1)(a) (unable or virtually unable to walk) only in the following circumstances—

- (a) his physical condition as a whole is such that, without having regard to circumstances peculiar to that person as to place of residence or as to place of, or nature of, employment—
 - (i) he is unable to walk,
 - (ii) his ability to walk out of doors is so limited, as regards the distance over which or the speed at which or the length of time for which or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk, or
 - (iii) the exertion required to walk would constitute a danger to his life or would be likely to lead to a serious deterioration in his health; or
- (b) he has had both legs amputated at levels which are either through or above the ankle, or he has one leg so amputated and is without the other leg, or is without both legs, to the same extent as if it, or they, had been so amputated.

(2) For the purposes of section 37ZC(2)(a) (mobility component for persons who are both blind and deaf) a person is to be taken to satisfy the condition that he is—

- (a) blind, only where the degree of disablement resulting from loss of vision amounts to 100 per cent.; and
- (b) deaf, only where the degree of disablement resulting from loss of hearing amounts to not less than 80 per cent. on a scale where 100 per cent. represents absolute deafness.

(3) For the purposes of section 37ZC(2)(b), the conditions are that by reason of the combined effects of a person's blindness and deafness, he is unable, without the assistance of another person, to walk to any intended or required destination while out of doors.

(4) Except in a case to which paragraph (1)(b) applies, a person is to be taken not to satisfy the conditions mentioned in section 37ZC(1)(a) if he—

- (a) is not unable or virtually unable to walk with a prosthesis or an artificial aid which he habitually wears or uses; or

(b) would not be unable or virtually unable to walk if he habitually wore or used a prosthesis or an artificial aid which is suitable in his case.

(5) A person falls within section 37ZC(3)(a) (severely mentally impaired) if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning.

(6) A person falls within section 37ZC(3)(b) (severe behavioural problems) if he exhibits disruptive behaviour which—

(a) is extreme;

(b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property; and

(c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.

Invalid vehicle scheme

13. Schedule 2, which relates to the entitlement to the mobility component of certain persons eligible for invalid carriages, shall have effect.

Revocations

14. The revocations specified in column (1) of Schedule 3 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 27th January 1992.

(L.S.)

A. N. Burns

Assistant Secretary

Persons aged 65 and over*Review of an award made before a person attained the age of 65*

1.—(1) This paragraph applies where—

- (a) a person is aged 65 or over;
- (b) the person has an award of disability living allowance made before he attained the age of 65;
- (c) an application in writing is made in accordance with section 100A(6) or 104A(3)(a) for that award to be reviewed; and
- (d) an adjudicating authority is satisfied that the decision awarding disability living allowance ought to be both reviewed and revised.

(2) Subject to sub-paragraph (3), where sub-paragraph (1) applies, the person to whom the award relates shall not be precluded from entitlement to either component of disability living allowance solely by reason of the fact that he is aged 65 or over when the revised award is made.

(3) Where the adjudicating authority determining the application for review is satisfied that the decision ought to be reviewed on the ground that there has been a relevant change of circumstances since the decision was given, sub-paragraph (2) shall apply only where the relevant change of circumstances occurred before the person attained the age of 65.

Review of an award other than a review to which paragraph 1 refers

2. References in paragraphs 3 to 7 to a review of an award refer only to those reviews where the awards which are being reviewed were made—

- (a) on or after the date on which the person to whom the award relates attained the age of 65; or
- (b) before the person to whom the award relates attained the age of 65 where the award is reviewed and revised by reference to a change in the person's circumstances which occurred on or after the day on which he attained the age of 65.

Persons aged 65 and over and entitled to the care component

3.—(1) This paragraph applies where a person on or after attaining the age of 65—

- (a) is entitled to the care component and an adjudicating authority is satisfied that the decision awarding it ought to be revised on a review under section 100A, 100B(b) or 104A; or
- (b) makes a renewal claim for disability living allowance.

(2) Where a person was entitled on the previous award or on the award under review to the care component payable—

- (a) at the lowest rate, that person shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the care component; or

(a) Sections 100A and 104A were inserted by paragraphs 5 and 9 respectively of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17))

(b) Section 100B was inserted by paragraph 5 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

- (b) at the middle or highest rate, that person shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the care component payable at the middle or highest rate,

but in determining that person's entitlement, section 37ZB shall have effect as if in paragraph (a) of subsection (2) for the reference to 3 months there were substituted a reference to 6 months and as if paragraph (b) of that subsection were omitted.

(3) In this paragraph, a renewal claim is a claim made for disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date on which the claim was made, been entitled under an earlier award to the care component or to attendance allowance (referred to in this paragraph as "the previous award"); and
- (b) attained the age of 65 before that entitlement ended.

Invalid vehicle scheme

4.—(1) Where—

- (a) a certificate issued in respect of a person under Article 10(1) of the 1977 Order is in force; or
- (b) an invalid carriage or other vehicle is or was on or after 1st January 1976, provided to a person by the Department under Article 30(1) of the Order or by the Secretary of State under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977(a) or section 46(1) of the National Health Service (Scotland) Act 1978(b) being a carriage or other vehicle which is—
- (i) propelled by a petrol engine or by an electric motor,
 - (ii) supplied for use on a public road, and
 - (iii) controlled by the occupant,

that person shall not be precluded from entitlement to the mobility component payable at the higher rate specified in regulation 4(2)(a), or the care component payable at the highest or middle rate specified in regulation 4(1)(a) or (b), by reason only of the fact that he has attained the age of 65.

(2) In determining a person's entitlement where paragraph (1) applies, section 37ZB shall have effect as if in paragraph (a) of subsection (2) for the reference to 3 months there were substituted a reference to 6 months and as if paragraph (b) of that subsection were omitted.

Persons aged 65 and over and entitled to the higher rate mobility component

5.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the higher rate specified in regulation 4(2)(a), and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A; or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in section 37ZC(1)(a), (b) or (c).

(a) 1977 c. 49
(b) 1978 c. 29

(3) In this paragraph, and paragraphs 6 and 7, a renewal claim is a claim made for disability living allowance where the person making the claim had—

- (a) within the period of 12 months immediately preceding the date on which the claim was made, been entitled under an earlier award to the mobility component (referred to in these paragraphs as “the previous award”); and
- (b) attained the age of 65 before that entitlement ended.

Persons aged 65 and over and entitled to the lower rate mobility component

6.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component payable at the lower rate specified in regulation 4(2)(b), and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A; or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement to the mobility component, but in determining the person's entitlement to that component, section 37ZC(11) shall have effect as if paragraph (a), and the words “in any other case” in paragraph (b), were omitted.

Award of the care component where a person is entitled to the mobility component

7.—(1) This paragraph applies where a person on or after attaining the age of 65 is entitled to the mobility component and—

- (a) an adjudicating authority is satisfied that the decision giving effect to that entitlement ought to be revised on a review under section 100A, 100B or 104A; or
- (b) the person makes a renewal claim for disability living allowance.

(2) A person to whom this paragraph applies shall not be precluded, solely by reason of the fact that he has attained the age of 65, from entitlement under section 37ZB by virtue of having satisfied either the conditions mentioned in subsection (1)(b) or in subsection (1)(c), or in both those subsections, but in determining that person's entitlement, section 37ZB shall have effect as if in paragraph (a) of subsection (2) for the reference to 3 months there were substituted a reference to 6 months and paragraph (b) of that subsection were omitted.

Invalid Vehicle Scheme*Interpretation*

1. In this Schedule—

“vehicle scheme beneficiary” means any person of a class specified in Article 10(3)(a), (c) or (d) of the 1977 Order or any person of the class specified in Article 10(3)(b) of the 1977 Order whose application was approved on or after 1st January 1976 and, where an invalid carriage or other vehicle was provided or, as the case may be, applied for, is a person of any such class in respect of whom the invalid carriage or other vehicle provided or applied for was a vehicle—

(a) propelled by a petrol engine or by an electric motor;

(b) supplied for use on a public road; and

(c) to be controlled by the occupant;

“certificate” means a certificate for the purposes of Article 10(1) of the 1977 Order.

Prescribed periods for purposes of Article 10(3)(c) of the 1977 Order

2. For the purposes of Article 10(3)(c) of the 1977 Order—

(a) the prescribed period before 1st January 1976 shall be that commencing with 1st January 1970 and ending with 31st December 1975; and

(b) the prescribed period after 1st January 1976 shall be that commencing with 2nd January 1976 and ending with 31st March 1978.

Issue of certificates

3.—(1) The Department shall issue a certificate in the form approved by it in respect of any person—

(a) who has made an application for a certificate in the form approved by the Department; and

(b) whom the Department considers satisfies the conditions specified in sub-paragraph (2).

(2) The conditions specified in this sub-paragraph are that—

(a) the person is a vehicle scheme beneficiary; and

(b) his physical condition has not improved to such an extent that he no longer satisfies the conditions which it was necessary for him to satisfy in order to become a vehicle scheme beneficiary.

Duration and cancellation of certificates

4.—(1) Subject to sub-paragraph (2), the period during which a certificate is in force shall commence on the day specified in the certificate as being the date on which it comes into force and shall continue for the life of the person concerned.

(2) If in any case the Department determines that the condition specified in paragraph 3(2)(b) is not satisfied, the certificate shall cease to be in force from the date of such non-satisfaction as determined by the Department (or such later date as appears to the Department to be reasonable in the circumstances).

Application of these regulations in relation to vehicle scheme beneficiaries

5. In relation to a person in respect of whom a certificate is in force, these regulations shall have effect as if regulation 2(1)(a)(iii) and (b) were omitted.

Revocations

Column (1) <i>Citation</i>	Column (2) <i>Statutory Rule</i>	Column (3) <i>Extent of Revocation</i>
The Social Security (Mobility Allowance) Regulations (Northern Ireland) 1975	S.R. 1975 No. 280	The whole of the regulations
The Social Security (Child Benefit Consequential) Regulations (Northern Ireland) 1977	S.R. 1977 No. 73	Regulation 16
The Social Security (Mobility Allowance) (Vehicle Scheme Beneficiaries) Regulations (Northern Ireland) 1977	S.R. 1977 No. 242	The whole of the regulations
The Social Security Benefit (Persons Abroad) (Amendment) Regulations (Northern Ireland) 1977	S.R. 1977 No. 305	The whole of the regulations so far as previously unrevoked
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 1978	S.R. 1978 No. 90	Regulation 6
The Social Security (Mobility Allowance) (Vehicle Scheme Beneficiaries) (Amendment) Regulations (Northern Ireland) 1978	S.R. 1978 No. 149	The whole of the regulations
The Social Security (Mobility Allowance) (Amendment) Regulations (Northern Ireland) 1979	S.R. 1979 No. 47	The whole of the regulations so far as previously unrevoked
The Social Security (General Benefit, Claims and Payments and Mobility Allowance) Regulations (Northern Ireland) 1980	S.R. 1980 No. 385	The whole of the regulations so far as previously unrevoked
The Social Security (Adjudication) (Consequential Amendments) Regulations (Northern Ireland) 1984	S.R. 1984 No. 174	Regulations 5 and 10
The Social Security (Mobility Allowance) (Amendment) Regulations (Northern Ireland) 1986	S.R. 1986 No. 341	The whole of the regulations so far as previously unrevoked
The Social Security (Mobility Allowance) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 127	The whole of the regulations

Revocations

Column (1) <i>Citation</i>	Column (2) <i>Statutory Rule</i>	Column (3) <i>Extent of Revocation</i>
The Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 398	Regulations 2 and 3
The Social Security (Mobility Allowance and Adjudication) (Amendment) Regulations (Northern Ireland) 1991	S.R. 1991 No. 107	Regulation 2

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are consequential upon the coming into operation of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 ("the 1991 Order"). Article 3 of the 1991 Order introduces a new benefit to be known as disability living allowance ("the allowance") which consists of two components; a care component and a mobility component.

Part I of the regulations relates to their citation, commencement and interpretation (regulation 1).

Part II contains general provisions which relate to both components of the allowance. It sets out the conditions as to residence and presence in Northern Ireland which a person must satisfy to qualify for the allowance (regulation 2); contains provisions relating to those persons aged 65 and over (regulation 3 and Schedule 1); sets out the rate at which benefit is payable (regulation 4); and relates to late claims by a person who was previously entitled to benefit (regulation 5).

Part III relates to the care component of the allowance. It specifies the qualifying period for those whose entitlement to that component has been interrupted (regulation 6); makes provision for those people who undergo treatment by way of renal dialysis (regulation 7); and imposes restrictions on the payment of benefit where a person is accommodated in a hospital or is in certain accommodation where the cost is or may be, met wholly or partly out of public or local funds (regulations 8 to 10).

Part IV relates to the mobility component of the allowance. It specifies the qualifying period for those whose entitlement to that component has been interrupted (regulation 11); specifies the circumstances in which a person is to be treated as unable or virtually unable to walk, being both blind and deaf, having severe mental impairment or having severe behavioural problems (regulation 12); and provides for the entitlement to the mobility component of certain persons eligible for invalid carriages (regulation 13 and Schedule 2). Regulation 14, with Schedule 3, 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.

Sections 37ZA to 37ZE are some of the enabling provisions under which these regulations are made. They are inserted by Article 3(2) of the 1991 Order and are brought into operation on 6th April 1992 by virtue of Article 2 of the Disability Living Allowance and Disability Working Allowance (1991 Order) (Commencement No. 2) Order (Northern Ireland) 1991 (S.R. 1991 No. 501 (C. 24)).