STATUTORY INSTRUMENTS

1972 No. 1232

SOCIAL SECURITY

The National Insurance (Attendance Allowance) Amendment Regulations 1972

Made - - -	*9th August* 1972
Laid before Parliament	*18th August* 1972
Coming into Operation	*21st August* 1972

The Secretary of State for Social Services, in conjunction with the Treasury in so far as relates to matters with regard to which the Treasury have so directed, in exercise of his powers under section 81(3) and (4) of the National Insurance Act 1965(**a**), section 6(6) of the National Insurance Act 1970(**b**) and section 2 of the National Insurance Act 1972(**c**), and of all other powers enabling him in that behalf, hereby makes the following regulations, which relate solely to matters which have been referred to the Attendance Allowance Board in pursuance of section 5(1)(*b*) of the said Act of 1970 as extended by section 2(6) of the said Act of 1972, and which, by virtue of section 8(5) of the said Act of 1970, are exempt from the requirements of section 108 of the said Act of 1965 (consideration of regulations by the National Insurance Advisory Committee):—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Attendance Allowance) Amendment Regulations 1972 and shall come into operation on 21st August 1972.

(2) In these regulations, unless the context otherwise requires, "the principal regulations" means the National Insurance (Attendance Allowance) Regulations 1971(**d**), as amended (**e**).

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**f**) shall apply in relation to this instrument and in relation to the revocation effected by it as if this instrument and the regulation revoked by it were Acts of Parliament and as if the revocation were a repeal.

(**a**) 1965 c. 51. (**b**) 1970 c. 51. (**c**) 1972 c. 57.
(**d**) S.I. 1971/621 (1971 I, p. 1623). (**e**) S.I. 1971/1854 (1971 III, p. 5089).
(**f**) 1889 c. 63.

Amendment of Part I of the principal regulations

2. In regulation 1(2) of the principal regulations (definitions), after the definition of "the Act of 1970" there shall be inserted the following definition:—

" 'the Act of 1972' means the National Insurance Act 1972(**a**);".

Amendment of Part II of the principal regulations

3. In regulation 2 of the principal regulations (entitlement conditions relating to residence and presence in Great Britain), in paragraph (1), for the words "section 4(2) of the Act of 1970" there shall be substituted the words "section 2(1) of the Act of 1972"; and in regulation 3 of the principal regulations (exception from disqualification for receipt of benefit), for the words "the Act of 1970" there shall be substituted the words "the Act of 1972".

Amendment of Part III of the principal regulations

4.—(1) For regulation 5 of the principal regulations (adults in certain accommodation other than hospitals) there shall be substituted the following regulation:—

"Adults in certain accommodation other than hospitals

5. Subject to regulation 6 of these regulations, attendance allowance shall not be payable in respect of a person who has attained the age of sixteen for any period during which he is a person living in accommodation provided for him in pursuance of, or provided for him in circumstances in which the cost of the accommodation is or may be borne wholly or partly out of public or local funds in pursuance of, any of the enactments mentioned in the Schedule to these regulations, not being, in a case where the accommodation is provided in pursuance of any provision of the Social Work (Scotland) Act 1968(**b**) referred to in the said Schedule, accommodation which, in the opinion of the Secretary of State, is analogous to the temporary accommodation referred to in section 21(1)(*b*) of the National Assistance Act 1948(**c**).".

(2) For the Schedule to the principal regulations, there shall be substituted the provisions set out in Schedule 1 to these regulations.

Amendment of Part IV of the principal regulations

5.—(1) Regulations 7 and 8 of the principal regulations (modification of section 4(2) and (4) of the Act of 1970 in its application to children) shall be amended in accordance with the following provisions of this regulation.

(2) For regulation 7(1) there shall be substituted the following regulation:—

"Modification of section 2(1) *of the Act of* 1972 *in its application to children*

7.—(1) Section 2(1) of the Act of 1972 (entitlement to attendance allowance) shall have effect in relation to a child subject to the modifications contained in the following provisions of this regulation."

(**a**) 1972 c. 57.
(**b**) 1968 c. 49.
(**c**) 1948 c. 29.

(3) For regulation 7(4) there shall be substituted the following regulation:—

"(4) Section 2(1) of the Act of 1972 shall have effect as if after the word "functions" in both places where that word appears there were inserted the words "(being attention substantially in excess of that normally required by a child of the same age and sex)"; and as if after the word "others" in both places where it appears there were inserted the words "(being supervision substantially in excess of that normally required by a child of the same age and sex)".

(4) In regulation 7(5)(*d*), for the word "paragraph" there shall be substituted the word "sub-paragraph".

(5) In regulation 8—

(*a*) for the shoulder note and the words in paragraph (1) down to "during which", there shall be substituted the following shoulder note and words:—

"Children in hospital and certain other accommodation

8.—(1) Section 2(3) and (5) of the Act of 1972 (attendance allowance not payable in certain circumstances) shall have effect in relation to a child in accordance with the following provisions of this regulation and attendance allowance shall not be payable in respect of a child for any period during which—"; and

(*b*) for sub-paragraph (*b*) of paragraph (1) there shall be substituted the following sub-paragraph:—

"(*b*) the child is a person living in accommodation provided for him in pursuance of, or provided for him in circumstances in which the cost of the accommodation is or may be borne wholly or partly out of public or local funds in pursuance of, any of the enactments mentioned in the Schedule to these regulations; or".

Amendment of Part V of the principal regulations

6. Regulation 9 of the principal regulations (claims in advance) is hereby revoked.

Amendment of Part VI of the principal regulations

7.—(1) Regulation 13 of the principal regulations (application for reviews of determinations made by the Board) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in Part I of Schedule 2 to these regulations.

(2) In paragraph (1) of the said regulation 13, there shall be inserted at the beginning the words "Subject to the provisions of paragraph (1A) of this regulation", and after the said paragraph (1) there shall be inserted the following paragraph:—

"(1A) Such an application for review as is referred to in paragraph (1) of this regulation shall not be made within 12 months of a previous such application without the leave of the Board."

(3) In paragraph (2) of the said regulation 13, after the word "application" there shall be inserted the words "in respect of which the leave of the Board has been given or is not required".

8.—(1) Regulation 14 of the principal regulations (reviews of determinations made by the Board) shall be amended in accordance with the provisions of paragraph (2) of this regulation and shall accordingly have effect as set out in Part II of Schedule 2 to these regulations.

(2) In paragraph (2) of the said regulation 14, after the word "Board" there shall be inserted the words "having where appropriate given leave under regulation 13 (1A) of these regulations".

9. Regulation 15 of the principal regulations (amendment of the National Insurance (Determination of Claims and Questions) (No. 2) Regulations 1967) shall become paragraph (1) of that regulation and shall be renumbered accordingly; and immediately after it there shall be added the following paragraph:—

"(2) In paragraph (2)(*a*), as amended (**a**), of regulation 15 of the said regulations, there shall be added at the end of head (*iii*) the word 'or' and the following additional head:—

'(*iv*) a determination on review made by the Attendance Allowance Board constituted under section 5 of the National Insurance Act 1970.'."

Signed by authority of the Secretary of State for Social Services.

Paul Dean,
Parliamentary Under Secretary of State,
Department of Health and Social Security.

9th August 1972.

Tim Fortescue,
V. H. Goodhew,
Two of the Lords Commissioners of
Her Majesty's Treasury.

9th August 1972.

(a) The relevant amending instrument is S.I. 1971/1419 (1971 II, p. 3964).

SCHEDULE 1 Regulation 4(2)

SCHEDULE SUBSTITUTED FOR THE SCHEDULE TO THE PRINCIPAL REGULATIONS

THE SCHEDULE Regulations 5 and 8(1)(*b*)

ATTENDANCE ALLOWANCE NOT PAYABLE FOR ADULTS AND CHILDREN LIVING IN ACCOMMODATION PROVIDED FOR THEM IN PURSUANCE OF, OR PROVIDED FOR THEM IN CIRCUMSTANCES IN WHICH THE COST OF THE ACCOMMODATION IS OR MAY BE BORNE WHOLLY OR PARTLY OUT OF PUBLIC OR LOCAL FUNDS IN PURSUANCE OF, ANY OF THE ENACTMENTS REFERRED TO IN COLUMN 3.

Chapter	Short Title	Enactments
1933 c. 12.	The Children and Young Persons Act 1933.	Section 53.
1937 c. 37.	The Children and Young Persons (Scotland) Act 1937.	Sections 40(3), 41(1), 47(1), 57(1) and (2) and 58A.
1944 c. 10.	The Disabled Persons (Employment) Act 1944.	Section 15.
1944 c. 31.	The Education Act 1944.	Sections 9(1), 33(2), 34(4), 41, 42 and 50.
1948 c. 29.	The National Assistance Act 1948.	Part III other than section 21(1)(*b*).
1948 c. 43.	The Children Act 1948.	Sections 1, 13 and 19.
1953 c. 33.	The Education (Miscellaneous Provisions) Act 1953.	Section 6(2)(*b*).
1962 c. 47.	The Education (Scotland) Act 1962.	Sections 1 and 5.
1968 c. 46.	The Health Services and Public Health Act 1968.	Section 12.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Sections 12, 15, 21, 37(2) and (3), 40(4) and (7), 43(4), 44, 45 and 59(1).
1969 c. 54.	The Children and Young Persons Act 1969.	Sections 23 and 28.

SCHEDULE 2 Regulations 7(1) and 8(1)

PART I

REGULATION 13 OF THE PRINCIPAL REGULATIONS AS AMENDED* BY THESE REGULATIONS

Application for reviews of determinations made by the Board

13.—(1) *Subject to the provisions of paragraph (1A) of this regulation,* an application for a review, in pursuance of section 6(3)(*a*) or (*b*) of the Act of 1970, of a determination may be made by the claimant or the Secretary of State and shall be made in writing to

*The words added by these regulations are shown in italics.

the Board stating the grounds of the application; any such application by the claimant shall be delivered or sent to a local office, and in the case of an application by the Secretary of State he shall send a copy of it to the claimant.

(1*A*) *Such an application for review as is referred to in paragraph* (1) *of this regulation shall not be made within* 12 *months of a previous such application without the leave of the Board.*

(2) On receipt of any such application *in respect of which the leave of the Board has been given or is not required,* the Board shall proceed to deal with it in accordance with the provisions of section 6 of the Act of 1970.

(3) In this regulation "a local office" means any office appointed by the Secretary of State as a local office for the purposes of the principal Act or of these regulations.

PART II

REGULATION 14 OF THE PRINCIPAL REGULATIONS AS AMENDED* BY THESE REGULATIONS

Reviews of determinations made by the Board

14.—(1) The prescribed period within which the Board may, in pursuance of section 6(3)(*b*) of the Act of 1970, review a determination on any ground, shall be a period of 3 months from the date on which notice of the determination which it is sought to have reviewed was given or sent to the claimant, so however that if an application for review is made (whether by the claimant or the Secretary of State) within 3 months from that date the prescribed period shall be extended until the application for review is determined.

(2) Where the Board, *having where appropriate given leave under regulation* 13(1*A*) *of these regulations,* have reviewed a determination or have refused to review a determination, the claimant and the Secretary of State shall be notified in writing of the determination on the review or of that refusal as the case may be and the reasons for it and the claimant shall be notified of the conditions governing an appeal to the Commissioner.

EXPLANATORY NOTE

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

These Regulations further amend the National Insurance (Attendance Allowance) Regulations 1971 ("the principal regulations"). Most of the amendments of the principal regulations made by these Regulations are consequential upon amendments to the provisions of the National Insurance Act 1970 ("the 1970 Act") relating to attendance allowance made by the National Insurance Act 1972 ("the 1972 Act").

Regulation 1 relates to the citation, commencement and interpretation of these Regulations; regulation 2 inserts a definition of the 1972 Act in Part I of the principal regulations; and regulation 3 makes minor amendments to Part II of the principal regulations consequent upon the repeal by the 1972 Act of certain provisions of the 1970 Act. Regulation 4 amends regulation 5 of the principal regulations (circumstances in which attendance allowance is not payable for adults in certain accommodation other than hospitals); regulation 5 amends Part IV of the principal regulations (modification of certain provisions relating to attendance allowance in their application to children);

*The words added by these regulations are shown in italics.

and regulation 6 revokes regulation 9 of the principal regulations (claims in advance) which is replaced by section 2(3) of the 1972 Act. Regulation 7 amends Part VI of the principal regulations, by making provision whereby an application for review of a determination made by the Attendance Allowance Board cannot be made within 12 months of a previous such application without the leave of the Board, and by further amending regulation 15 of the National Insurance (Determination of Claims and Questions) (No. 2) Regulations 1967 (S.I. 1967/1570) so that a review decision of the benefit authorities (insurance officer, local tribunal or the National Insurance Commissioner) based solely upon a review determination of the Board may make attendance allowance payable, or payable at the higher weekly rate, for a period more than 12 months before the application for review was made. Schedule 1 to these Regulations, which applies both to adults and children, replaces the Schedule to the principal regulations and Schedule 2 sets out regulations 13 and 14 of the principal regulations as amended by these Regulations.

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