STATUTORY INSTRUMENTS

1971 No. 621

SOCIAL SECURITY

The National Insurance (Attendance Allowance) Regulations 1971

Made - - - -	1*st April* 1971
Laid before Parliament	20*th April* 1971
Coming into Operation	3*rd May* 1971

The National Insurance Joint Authority, in exercise of powers conferred by section 50 of the National Insurance Act 1965**(a)**, and the Secretary of State for Social Services, in exercise of his powers under sections 48, 49(1), 52, 73, 75 and 81(3) and (4) of that Act and sections 4 and 6 of the National Insurance (Old persons' and widows' pensions and attendance allowance) Act 1970**(b)**, in either case in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, and in exercise of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals as required by section 8 of the Tribunals and Inquiries Act 1958**(c)**, hereby make 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, and which, by virtue of section 8(5) of that Act, are exempt from the requirements of section 108 (reference to the National Insurance Advisory Committee) of the said Act of 1965:—

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Attendance Allowance) Regulations 1971 and shall come into operation on 3rd May 1971.

(2) In these regulations, unless the context otherwise requires—

"the Act of 1970" means the National Insurance (Old persons' and widows' pensions and attendance allowance) Act 1970;

"the Board" means the Attendance Allowance Board;

"a child" means a person who is under the age of 16;

"the Commissioner" means the Chief National Insurance Commissioner appointed under section 9 of the National Insurance Act 1966**(d)** and any other Commissioner so appointed;

(a) 1965 c. 51.
(b) 1970 c. 51.
(c) 1958 c. 66.
(d) 1966 c. 6.

"the Industrial Injuries Act" means the National Insurance (Industrial Injuries) Act 1965**(a)**;

"the principal Act" means the National Insurance Act 1965;

and other expressions have the same meaning as in the principal Act.

(3) References in these regulations—

(*a*) to any enactment or regulation shall, except in so far as the context otherwise requires, be construed as references to that enactment or regulation as amended or extended by or under any other enactment, order or regulation;

(*b*) to a person's father, mother, son, daughter, brother or sister shall include references to his step-father, step-mother, step-son, step-daughter, half-brother and step-brother, or half-sister and step-sister as the case may be and a person shall be treated as such a relative if he is such a relative by adoption or would be such a relative if some person born illegitimate had been born legitimate.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(b)** shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

PART II

RESIDENCE AND PRESENCE IN GREAT BRITAIN

Entitlement conditions relating to residence and presence in Great Britain

2.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 4(2) of the Act of 1970 (entitlement to attendance allowance) in relation to any person in respect of any day shall be—

(*a*) that he is ordinarily resident in Great Britain; and

(*b*) that he is present in Great Britain; and

(*c*) that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than 26 weeks in the 12 months immediately preceding that day; and

(*d*) in the case of a person who is a British subject whose place of birth is not in the United Kingdom or a British protected person within the meaning of the British Nationality Act 1948**(c)**, that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than 52 weeks in the period of 2 years immediately preceding that day; and

(*e*) in the case of a person who is neither a British subject nor a British protected person within the meaning of the British Nationality Act 1948, that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than 156 weeks in the period of 4 years immediately preceding that day; and

(*f*) in the case of a person who, in respect of a period which includes that day, receives emoluments to which regulation 10A of the Family Allowances (Qualifications) Regulations 1969**(d)**, as amended **(e)**,

(a) 1965 c. 52.
(b) 1889 c. 63.
(c) 1948 c. 56.
(d) S.I. 1969/212 (1969 I, p. 543).
(e) S.I. 1970/24(1970 I, p. 217).

(certain persons exempt from United Kingdom income tax), applies, or the spouse, or son or daughter under the age of 16, of such a person, that he was present in Great Britain for a period of, or periods amounting in the aggregate to, 156 weeks in the period of 4 years immediately preceding the period in respect of which he first receives or received such emoluments.

(2) For the purposes of paragraphs (1)(*b*) and (*c*) of this regulation a person who is absent from Great Britain on any day shall be treated as being present in Great Britain—

(*a*) if on that day he is—

(i) a merchant seaman within the meaning of the Family Allowances (Qualifications) Regulations 1969, as amended**(a)**; or

(ii) a member of the forces within the meaning of those regulations; or

(iii) living with such a member of the forces and is that member's spouse, son, daughter, father, father-in-law, mother or mother-in-law; or

(*b*) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 6 months; or

(*c*) where his absence is temporary and for the specific purpose of his being treated for incapacity or a disabling condition which commenced before he left Great Britain, during such period as the Secretary of State may allow having regard to the circumstances of the case.

(3) For the purposes of paragraphs (1)(*d*) and (*e*) of this regulation—

(*a*) a person who is absent from Great Britain on any day shall be treated as being present in Great Britain if on that day he is a person mentioned in paragraph (2)(*a*) of this regulation;

(*b*) a child who does not satisfy the condition which applies to him shall be treated as having satisfied it if the person who would otherwise be entitled to the allowance either satisfies the condition which would be applicable to that person or is a British subject whose place of birth is in the United Kingdom.

(4) Paragraph (1)(*f*) of this regulation shall not apply to any person, or to his spouse, or son or daughter under the age of 16, in respect of a day if, in relation to the income tax year immediately preceding the income tax year in which that day falls, he proves that the amount of his emoluments to which paragraph (1)(*f*) of this regulation refers was less than his total income as defined in section 528 of the Income and Corporation Taxes Act 1970**(b)**.

(5) Where attendance allowance has been payable in respect of any person for any day, the conditions set out in paragraph (1)(*d*) and (*e*) of this regulation shall not apply to that person in respect of any subsequent day.

Exception from disqualification for receipt of benefit

3. Without prejudice to the provisions of the Act of 1970 and of regulation 2 of these regulations relating to conditions as to presence in Great Britain, attendance allowance shall be a benefit which is excepted from the operation of section 49(1) of the principal Act (disqualification for receipt of benefit) in so far as it relates to a person who is absent from Great Britain.

(a) There is no amendment relevant to the subject matter of this paragraph.
(b) 1970 c. 10.

PART III

ADULTS IN HOSPITAL AND CERTAIN OTHER ACCOMMODATION

Adults in hospital

4. Subject to regulation 6 of these regulations, it shall be a condition for the receipt of attendance allowance for any period in respect of any person who has attained the age of 16, 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 National Health Service Acts 1946 to 1968, or the National Health Service (Scotland) Acts 1947 to 1968, or by or on behalf of the Secretary of State; or

(*b*) in pursuance of arrangements made, or having effect as if made, by the Secretary of State, or a regional hospital board constituted under any of those Acts, in a hospital or similar institution not so maintained or administered;

and, for this purpose, a person shall only be regarded as not being maintained free of charge in a hospital or similar institution for any period if he is paying or has paid, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for him in the hospital or similar institution for that period.

Adults in certain accommodation other than hospitals

5. Subject to regulation 6 of these regulations, attendance allowance shall not be payable in respect of any person who has attained the age of 16 for any period during which he is a person for whom accommodation is provided in pursuance of:—

(*a*) Part III of the National Assistance Act 1948**(a)** other than section 21(1)(*b*) thereof; or

(*b*) section 12 of the Health Services and Public Health Act 1968**(b)**; or

(*c*) Part IV of the Social Work (Scotland) Act 1968**(c)**, other than temporary 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.

Exception from regulations 4 *and* 5

6.—(1) Where a person was entitled to attendance allowance in respect of the period immediately before he commenced to undergo any treatment or entered any accommodation mentioned in regulation 4 or 5 of these regulations, as the case may be, those regulations shall not apply in respect of the first 4 weeks of any period during which he is undergoing such treatment or is in such accommodation.

(2) For the purposes of paragraph (1) of this regulation—

(*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;

(a) 1948 c. 29. **(b)** 1968 c. 46.
(c) 1968 c. 49.

(*b*) any period or periods to which regulation 4 or 5 of these regulations refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

CHILDREN

Modification of section 4(2) *of the Act of* 1970 *in its application to children*

7.—(1) Section 4(2) of the Act of 1970 (entitlement to attendance allowance) shall have effect in relation to a child subject to the modifications contained in the following provisions of this regulation.

(2) No person shall be entitled to an attendance allowance in respect of a child under the age of 2.

(3) In respect of a child who has attained the age of 2 the person entitled to an attendance allowance shall be—

(*a*) in the case of a child living with his mother, his mother;

(*b*) in the case of a child to whom sub-paragraph (*a*) does not apply, if the child is living with his father, his father;

(*c*) in any other case—

(i) a person with whom the child is living; or

(ii) a person, being the child's mother, father, grandparent, brother or sister, who is contributing to the cost of providing for him.

(4) Section 4(2)(*a*) and (*b*) shall have effect as if at the end of each paragraph there were included the words "and requires attention and supervision substantially in excess of that normally required by a child of the same age and sex".

(5) Paragraph (3) of this regulation shall have effect subject to the following provisions—

(*a*) only one person shall be entitled to an attendance allowance in respect of a child for any period, and if more than one person would otherwise be entitled to the allowance for that period, the person entitled to it shall be such one of them as the Secretary of State may in his discretion decide; and

(*b*) where a sum has been paid to any person on account of attendance allowance in respect of a child for any period and has not been repaid or recovered, no attendance allowance shall be payable in respect of that child for that period to any other person notwithstanding that that other person otherwise establishes title to it; and

(*c*) attendance allowance payable to a woman who is entitled to it by virtue of the said paragraph (3) and who is living with her husband shall be receivable by her or by her husband; and

(*d*) any period of—

(i) absence of a child from any person shall be disregarded for the first 4 weeks of that period and, in a case where that person is one of spouses living together and the other spouse would have become entitled to the allowance had he claimed it, for such further weeks, if any, as the Secretary of State may in his discretion decide;

(ii) interruption in the contributions of a person shall be disregarded for the first 4 weeks of that period;

so however that this paragraph shall not apply where some other person would but for this paragraph be entitled to the allowance; and

(*e*) where a child would be regarded as living with a person although absent from that person, they shall be deemed to have ceased to live together after the expiration of any period of absence disregarded in pursuance of the preceding sub-paragraph; and

(*f*) a person shall be treated as contributing to the cost of providing for a child if that person is one of spouses living together and the other of them is so contributing.

(6) For the purposes of paragraph (5)(*c*), (*d*) and (*f*) of this regulation a woman shall not be deemed to be living otherwise than with her husband unless they are permanently living in separation either by agreement or under an order of a court, or one of them has deserted the other and the separation which is incident to the desertion has not come to an end.

Modification of section 4(4) *of the Act of* 1970 *in its application to children*

8.—(1) Section 4(4) of the Act of 1970 (attendance allowance not payable in certain circumstances) shall have effect in relation to a child as if it provided additionally that, subject to the following provisions of this regulation, an attendance allowance shall not be payable for any period during which—

(*a*) the child is not accommodated in a private household unless the person to whom the allowance would otherwise be payable is contributing to the cost of providing for the child at a weekly rate not less than the aggregate amount of—

(i) the attendance allowance; and

(ii) where an allowance under the Family Allowances Act 1965**(a)** is payable to that person, any contribution necessary in order that the child may be treated, for the purposes of that Act, as being included in the same family as that person; and

(iii) where in respect of the child any benefit or increase of benefit is payable under the principal Act or the Industrial Injuries Act to that person or his spouse, any contribution required in respect of the child for the purposes of section 42(1)(*b*) of the principal Act or, as the case may be, section 17(4)(*b*) or 21(4) of the Industrial Injuries Act;

so however that in a case to which head (iii) of this sub-paragraph applies head (ii) shall not apply unless an allowance under the Family Allowances Act 1965 is payable in respect of the child as a child of that person's family; or

(*b*) the child is living in accommodation provided in pursuance of any of the enactments mentioned in the Schedule to these regulations and is not living with his mother or father; or

(*c*) the child is undergoing medical or other treatment as an in-patient in a hospital or similar institution; in this sub-paragraph "hospital or similar

(a) 1965 c. 53.

institution" means any premises for the reception and treatment of persons suffering from any illness, including any mental disorder, or of persons suffering from physical disability, and any premises used for providing treatment during convalescence or for medical rehabilitation.

(2) Where any person was entitled to attendance allowance in respect of a child for the period immediately before that child commenced to undergo such medical or other treatment as is mentioned in paragraph (1)(*c*) of this regulation, paragraph (1)(*a*) and (*c*) of this regulation shall not apply to the first 4 weeks of any period during which the child is undergoing that medical or other treatment, so however that, for the purposes of this paragraph, 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.

(3) Paragraph (1)(*c*) of this regulation shall not apply where the person concerned is contributing to the cost of providing for the child at a weekly rate of not less than the contributions required in respect of the child for the purposes of paragraph (1)(*a*) of this regulation and the child is undergoing medical or other treatment as an in-patient—

(*a*) in a hospital or similar institution mentioned in regulation 4 of these regulations and is not being maintained free of charge within the meaning of that regulation; or

(*b*) in any hospital or similar institution (within the meaning of the said paragraph (1)(*c*)) not so mentioned.

(4) For the purposes of paragraphs (1)(*a*) and (3) of this regulation a person shall be treated as contributing a sum if that person is one of spouses living together and those spouses taken together are contributing that sum; and for the purposes of this paragraph spouses shall not be deemed to be living otherwise than together unless they are permanently living in separation either by agreement or under an order of a court, or one of them has deserted the other and the separation which is incident to that desertion has not come to an end.

PART V

CLAIMS AND PAYMENTS

Claims in advance

9.—(1) A claim for attendance allowance may be made during the period of 6 months mentioned in section 4(3) of the Act of 1970 and an award may be made in pursuance of the claim.

(2) Any such award shall be subject to the condition that the person to whom the claim relates satisfies one of the conditions mentioned in section 4(3) of the Act of 1970 and may be reviewed at any time if it is found that no condition so mentioned was satisfied at some time during the period of the award or the interval between the making of the award and the beginning of that period.

Claims to be treated as claims for attendance allowance

10. A claim for benefit under the Ministry of Social Security Act 1966**(a)** may be treated additionally as a claim for attendance allowance.

(a) 1966 c. 20.

Time and manner of payment of attendance allowance

11.—(1) Subject to the following provisions of this regulation, the provisions of regulation 10 of the National Insurance (Claims and Payments) Regulations 1948**(a)**, as amended**(b)** (time and manner of payment of certain benefits), other than paragraphs (4) and (7) thereof, shall apply to an attendance allowance as if an attendance allowance were a pension within the meaning of those regulations.

(2) Subject to the provisions of the said regulation 10, weekly sums on account of attendance allowance shall be payable on Mondays, so however that the Secretary of State may in any particular case or class of cases arrange for the allowance to be payable on any other day of the week and where it is in payment to any person and the day on which it is payable is changed, it shall be paid at a daily rate of one-seventh of the weekly rate in respect of any days for which payment would have been made but for that change.

(3) Notwithstanding the provisions of the said regulation 10, an attendance allowance shall be paid at a daily rate of one-seventh of the weekly rate in any case where it becomes payable for a period of less than a week which is immediately preceded and immediately succeeded by periods during which—

(*a*) the person in respect of whom it is payable was in a hospital or similar institution in circumstances to which regulation 4 or 8(1)(*c*) of these regulations applied; or

(*b*) an allowance was not payable because regulation 5 or 8(1)(*b*) of these regulations applied.

Amendment of the National Insurance (Claims and Payments) Regulations 1948

12. In Part II of Schedule 1 to the National Insurance (Claims and Payments) Regulations 1948, as amended**(c)**, (claims for certain benefits to be interchangeable with claims under the Industrial Injuries Act) there shall be added in the first column the words "Increase of disablement pension where constant attendance needed" and in the second column opposite thereto, the words "Attendance allowance".

PART VI

REVIEWS OF DETERMINATIONS

Application for reviews of determinations made by the Board

13.—(1) 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 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.

(2) On receipt of any such application 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.

(a) S.I. 1948/1041 (Rev. XVI, p. 313: 1948 I, p. 2709).

(b) The relevant amending instruments are S.I. 1951/1232, 1952/1207, 1966/1010, 1967/1125, 1969/1135 (1951 I, p. 1457; 1952 II, p. 2122; 1966 II, p. 2407; 1967 II, p. 3285; 1969 II, p. 3371).

(c) The relevant amending instrument is S.I. 1952/1207 (1952 II, p. 2122).

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 of the determination.

(2) Where the Board 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.

Amendment of National Insurance (Determination of Claims and Questions) (No. 2) Regulations 1967

15. In regulation 15(1)(*c*) of the National Insurance (Determination of Claims and Questions) (No. 2) Regulations 1967**(a)** (decisions involving payment of or increase in benefit), after the words "widow's benefit," there shall be inserted the words "attendance allowance,".

PART VII

APPEALS

Appeals to the Commissioner on a question of law

16.—(1) Subject to the following provisions of this regulation, the claimant or the Secretary of State may appeal to the Commissioner, with the leave of the Commissioner, against a determination by the Board of any question of law arising on a review by the Board in pursuance of subsection (3) of section 6 of the Act of 1970 (which relates to determinations by the Board whether certain conditions for attendance allowance are satisfied) or arising in connection with a refusal by the Board to review a determination made in pursuance of subsection (2) of that section.

(2) An application for leave to appeal by virtue of paragraph (1) of this regulation shall be made in writing to the Commissioner within 3 months from the date on which the determination on review or refusal to review, as the case may be, was sent to the claimant or within such further time as the Commissioner may for special reasons allow; and every such application shall include a statement of the question of law in respect of which it is alleged that the determination or refusal by the Board is erroneous and on which it is wished to appeal.

(3) An application by a claimant under paragraph (2) of this regulation shall be delivered or sent to a local office, and where the application is made by the Secretary of State he shall send a copy of it to the claimant; and in each case the Secretary of State shall send to the Commissioner the application and a copy of the determination on which the question of law is alleged to arise.

(4) Subject to the provisions of regulation 17(5) of these regulations, an appeal against a determination of the Board shall be brought by giving notice thereof in writing at a local office within 3 months from the date on which the decision giving leave to appeal was made, or within such further time as the Commissioner may for special reasons allow; and any such notice shall include a statement of the question of law in respect of which it is alleged that the determination of the Board is erroneous.

(a) S.I. 1967/1570 (1967 III, p. 4350).

(5) The Secretary of State shall send to the Commissioner any notice of an appeal under paragraph (4) of this regulation; and where he gives the notice he shall send a copy of it to the claimant.

(6) 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.

Provisions as to the hearing and determination of applications for leave to appeal and of appeals

17.—(1) If the Secretary of State or the claimant, as the case may be, makes a request to the Commissioner for a hearing of an application for leave to appeal or of an appeal, such request shall be granted unless, after considering the documents in the case and the reasons put forward in such request, the Commissioner is satisfied that the application or appeal can properly be determined without a hearing, in which event he may refuse such request and proceed to determine the application or appeal and the person who made the request shall be informed in writing of such refusal.

(2) If, in accordance with the provisions of the last foregoing paragraph, a request for a hearing has been granted or if, notwithstanding that no request has been made, the Commissioner is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to the Secretary of State and the claimant and every such hearing shall be in public except in so far as the Commissioner for special reasons may otherwise direct.

(3) The Secretary of State and the claimant shall have the right to be present and to be heard at such a hearing and may be represented by counsel, advocate or solicitor or any other person.

(4) If any person to whom notice of hearing has been duly given in accordance with paragraph (2) of this regulation should fail to appear either in person or by representative at the hearing, the Commissioner may proceed to determine the application or appeal notwithstanding the absence of such person, or may give such directions as are thought proper with a view to the determination of the application or appeal.

(5) Where the Commissioner, upon consideration of an application made to him in accordance with the provisions of regulation 16 of these regulations, gives leave to appeal, he may proceed to determine any question of law stated in the application for leave to appeal as though it were a question of law arising on an appeal and as though the application were an appeal; so however that he shall not so proceed unless the consent of the Secretary of State and the claimant has been given.

(6) The Commissioner may either before, or at any time during, the hearing of an appeal require the Board to submit such statement of the facts on which the question of law submitted for his decision arises as he considers necessary for the proper determination of that question.

(7) Where on an application for leave to appeal or on an appeal there is before the Commissioner medical advice or medical evidence relating to a disabled person (whether the claimant or not) which has not been disclosed to the claimant and in the opinion of the Commissioner the disclosure to the claimant of that advice or evidence would be harmful to his health, such advice or evidence shall not be required to be disclosed to him, but the Commissioner shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of his determination of the application or appeal.

(8) Subject to the provisions of these regulations the procedure in connection with the consideration and determination of any application or appeal shall be such as the Commissioner may determine.

Decisions of the Commissioner

18.—(1) The decision of the Commissioner on an application for leave to appeal or on any question of law raised by any appeal shall be recorded in writing and signed by him, and a copy thereof shall be sent as soon as may be practicable to the claimant and to the Secretary of State.

(2) The Secretary of State shall inform the Board of any such decision in which the Commissioner holds that the determination of the Board was erroneous in law, and the Board shall review its determination for the purpose of confirming or revising it.

Tribunal of Commissioners

19. Section 9(3) of the National Insurance Act 1966**(a)** (under which an appeal involving a question of law of special difficulty may be heard by a tribunal of 3 Commissioners) shall apply in relation to an appeal brought in pursuance of these regulations and, except where the context otherwise requires, any reference in regulation 17 or 18 of these regulations to the Commissioner includes a reference to such a tribunal.

Exercise of power to extend time limits

20. Any power given by this Part of these regulations to extend the period during which anything is required to be done under these regulations or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

PART VIII

MISCELLANEOUS AMENDMENTS TO REGULATIONS

Amendment of the National Insurance (General Benefit) Regulations 1970

21. In regulation 13(2)(*b*) of the National Insurance (General Benefit) Regulations 1970**(b)** (suspension of payment of benefit pending the determination of certain appeals) after the words "widow's benefit," there shall be inserted the words "attendance allowance,".

Amendment of the National Insurance (Overlapping Benefits) Regulations 1948

22. In Part II of the National Insurance (Overlapping Benefits) Regulations 1948**(c)**, as amended**(d)**, after regulation 8 there shall be inserted the following regulation—

"*Attendance allowance*

9.—(1) Notwithstanding the foregoing provisions of these regulations, no adjustments shall be made under those provisions between attendance

(a) 1966 c. 6. **(b)** S.I. 1970/1981 (1970 III, p. 6461).
(c) S.I. 1948/2711 (Rev. XVI, p. 196: 1948 I, p. 2657).
(d) There is no amendment which relates expressly to the subject matter of these Regulations.

allowance and any other personal or dependency benefit under the Act, no such benefit shall be adjusted by reference to attendance allowance and attendance allowance shall be adjusted only in accordance with the following provision of this regulation.

(2) Where attendance allowance is payable in respect of any person for any period and any other benefit based on his need for attendance is payable for that period under the Industrial Injuries Act or any Pneumoconiosis and Byssinosis Benefit Scheme, Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme, the attendance allowance shall be adjusted by deducting from it the amount of that other benefit and only the balance (if any) shall be payable for that period in respect of the attendance allowance."

Keith Joseph,
Secretary of State for Social Services.

29th March 1971.

Given under the official seal of the National Insurance Joint Authority.

(L.S.)

N. E. Wade,
A person authorised by the National Insurance Joint Authority to act on behalf of the Secretary, National Insurance Joint Authority.

29th March 1971.

V. H. Goodhew,
Bernard Weatherill,
Two of the Lords Commissioners of Her Majesty's Treasury.

1st April 1971.

Regulation 8(1)(*b*)

THE SCHEDULE

Attendance allowance not payable for children living in accommodation provided in pursuance of the enactments shown

23 & 24 Geo. 5.	c.12. The Children and Young Persons Act 1933	section 53
1 Edw. 8 & 1 Geo. 6.	c.37. The Children and Young Persons (Scotland) Act 1937	sections 57 & 58A
7 & 8 Geo. 6.	c.31. The Education Act 1944	section 33(2)
11 & 12 Geo. 6.	c.29. The National Assistance Act 1948	sections 21(1)(*a*) & 26
11 & 12 Geo. 6.	c.43. The Children Act 1948	sections 1 & 13
10 & 11 Eliz. 2.	c.47. The Education (Scotland) Act 1962	sections 1 & 5
1968	c.46. The Health Services and Public Health Act 1968	section 12
1968	c.49. The Social Work (Scotland) Act 1968	sections 15, 21, 44 & 45
1970	c.52. The Education (Handicapped Children) Act 1970	section 1

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations contain provisions relating to the attendance allowance introduced by the National Insurance (Old persons' and widows' pensions and attendance allowance) Act 1970.

The regulations prescribe the conditions for entitlement to an attendance allowance relating to residence and presence in Great Britain. They also provide that attendance allowance is not to be paid to persons receiving free hospital in-patient treatment or who are provided with certain other accommodation.

Special provision is made for persons under 16 years of age. There will be no title to attendance allowance for a child under 2 years of age and for children over that age there is to be the additional medical requirement that the child needs attention and supervision substantially in excess of that normally required by a child of the same age and sex. Generally the person entitled to the allowance will be the child's mother; if the child is not living with her, it will be the father or other person with whom the child is living.

Provision is made for appeals to a National Insurance Commissioner on questions of law arising on determinations by the Attendance Allowance Board.

The regulations contain provisions relating to claims for and payment of attendance allowance and provisions of a minor or consequential nature.

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