1977 No. 250

SOCIAL SECURITY

The Social Security (Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1977

Made . . . . . *9th August* 1977

Coming into operation . . . *29th August* 1977

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 35, 80(2) and 81 of the Social Security (Northern Ireland) Act 1975(**a**), as amended in the case of the said section 80(2) by Article 13(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**b**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1977 and shall come into operation on 29th August 1977.

(2) In these regulations the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975(**c**), as amended(**d**), are referred to as "the principal regulations" and the Social Security (Claims and Payments) Regulations (Northern Ireland) 1975(**e**), as amended(**f**), are referred to as "the Claims and Payments Regulations".

(3) Each provision of these regulations which amends other regulations shall be construed as one with the regulations which it amends.

Amendment of regulation 2 of the principal regulations

2. Regulation 2 of the principal regulations (entitlement conditions relating to residence and presence in Northern Ireland) shall be amended by the substitution in paragraph (3)(*a*) for "paragraph (2)(*a*)" of "paragraph (2)(*a*), (*b*) or (*c*)".

Amendment of regulation 4 of the principal regulations

3. Regulation 4 of the principal regulations (adults in certain accommodation other than hospitals) shall be amended by the addition, at the end of that regulation, of the words—

"and not being, in a case of a person who has not attained the age of 18, accommodation provided in pursuance of Article 36(1)(*b*) of the Health and Personal Social Services (Northern Ireland) Order 1972(**g**).".

(a) 1975 c. 15
(b) S.I. 1977/610 (N.I. 11)
(c) S.R. 1975 No. 102 (I, p. 620)
(d) The relevant amending regulation is S.R. 1977 No. 73
(e) S.R. 1975 No. 104 (I, p. 641)
(f) There is no amendment relevant to the subject matter of these regulations
(g) S.I. 1972/1265 (N.I. 14)

Amendment of regulation 6 of the principal regulations

4. Regulation 6 of the principal regulations (modification of section 35(1) to (4) of the Act in its application to children) shall be amended by the substitution for paragraph (5) of that regulation (provisions relating to person entitled to attendance allowance in respect of a child) of the following paragraph:

"(5) Paragraph (4) shall have effect subject to the following provisions—

(*a*) in a case to which sub-paragraph (*c*) of paragraph (4) applies, where, but for this sub-paragraph more than one person would be entitled to an attendance allowance in respect of a child for any period, the person so entitled shall be such one of those persons as the Department may determine; 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, attendance allowance in respect of that child for that period shall not be payable to any other person who may establish title to it except to the extent that it may be payable at a higher rate than that already paid; and

(*c*) where a woman is living with her husband, attendance allowance to which she is entitled by virtue of paragraph (4) shall be payable to her or to her husband; and

(*d*) except where some other person would, but for this sub-paragraph, be awarded the allowance, if a child has been living with any person that child shall be treated as continuing to live with him during any period—

(i) throughout which the child is not living with him which has not lasted for more than 28 days continuously; and

(ii) where that person is one of spouses living together and the other spouse would have become entitled to the allowance had he claimed it, during such further period as the Department may determine to be reasonable in all the circumstances of the case;

and, where a child would otherwise be regarded as living with a person although absent from that person he shall, subject to the provisions of this sub-paragraph, be deemed, for the purposes of attendance allowance, to have ceased so to live; and

(*e*) a person, who has been contributing to the cost of providing for a child, shall be treated as continuing so to contribute during any period, in which he is not so contributing, which has not lasted for more than 28 days continuously; so however that this sub-paragraph shall not apply where some other person would, without the application of this sub-paragraph, be awarded the allowance; 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.".

Amendment of regulation 7 of the principal regulations

5. Regulation 7 of the principal regulations (children in hospital and certain other accommodation) shall be amended by the insertion in paragraph (1)(*b*) of that regulation, immediately after the words "Schedule to these regulations", of the words:

"not being accommodation provided in pursuance of Article 36(1)(*b*) of the Health and Personal Social Services (Northern Ireland) Order 1972".

Amendment of the Schedule to the principal regulations

6.—(1) The Schedule to the principal regulations (attendance allowance not payable for adults and children living in accommodation provided in pursuance of, or provided wholly or partly at public expense in pursuance of, any of the enactments specified) shall be amended in accordance with the provisions of paragraph (2).

(2) In column 3 of the said Schedule there shall be inserted after the reference to section 114 of the Children and Young Persons Act (Northern Ireland) 1968(**h**) the words "(except subsection (1)(*a*))".

Amendment of regulation 9 of the Claims and Payments Regulations

7. Regulation 9 of the Claims and Payments Regulations (interchange with claims for other benefits) shall be amended by the substitution, for paragraph (5) of that regulation, of the following paragraph:

"(5) A claim for benefit under the Supplementary Benefits &c. Act (Northern Ireland) 1966(**i**) may be treated as a claim also for attendance allowance.".

Amendment of regulation 16 of the Claims and Payments Regulations

8. Regulation 16 of the Claims and Payments Regulations (special provision relating to payment of attendance allowance and constant attendance allowance for persons out of hospital for short periods) shall be amended by the deletion of all references to attendance allowance and to this end there shall be substituted for the said regulation 16 the following regulation:

"Special provision relating to payment of constant attendance allowance for persons out of hospital for short periods

16. Notwithstanding anything contained in the foregoing provisions of these regulations an increase of disablement pension under section 61 where constant attendance is needed ("constant 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 the constant attendance allowance was not payable because regulation 13(1) of the Social Security (Industrial Injuries) (Benefit) Regulations (Northern Ireland) 1976(**j**) applied.".

New regulation to be inserted in the Claims and Payments Regulations

9. After regulation 16 of the Claims and Payments Regulations there shall be inserted the following regulation:

"Special provision relating to payment of attendance allowance for persons out of hospital for periods not expected to exceed 13 weeks

16A.—(1) In any case where an attendance allowance becomes payable for a period commencing on or after 29th August 1977 which is immediately preceded by, and which at its commencement is expected to be followed in not more than 13 weeks by periods during which—

(*a*) the person in respect of whom it is payable is in a hospital or in a similar institution in circumstances to which regulation 3 or 7(1)(*c*) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975 applies; or

(**h**) 1968 c. 34 (N.I.)
(**i**) 1966 c. 28 (N.I.)
(**j**) S.R. 1976 No. 42

(*b*) the allowance is not payable because regulation 4 or 7(1)(*b*) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975 applies,

the allowance payable for such period shall, so long as the period does not continue for more than 13 weeks, be paid at a daily rate of one-seventh of the weekly rate and shall be paid in arrears at weekly intervals or at such other intervals as the Department may in any case direct.

(2) In this regulation the expression "13 weeks" means a period of 91 consecutive days.".

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 9th August 1977.

(L.S.) *C. G. Oakes*
Senior Assistant Secretary

EXPLANATORY NOTE

(*This note is not part of the regulations but is intended to indicate their general purport.*)

The regulations amend the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975 so as to allow attendance allowance to be payable in respect of a child who is boarded out with foster parents by the Department. They also make certain other minor corrections and amendments to these regulations.

The regulations also amend the Social Security (Claims and Payments) Regulations (Northern Ireland) 1975 so as to enable claims for benefit under the Supplementary Benefits &c. Act (Northern Ireland) 1966 to be treated also as claims for attendance allowance and to vary the special provisions relating to payment of attendance allowance for persons out of hospital for short periods.