1975 No. 102

SOCIAL SECURITY

The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975

Made . . . . . *4th April* 1975

Coming into operation . . . . *6th April* 1975

The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred on it by sections 35, 82(6)(*b*), 85(1)(*b*), 105 and 106 of the Social Security (Northern Ireland) Act 1975(**a**), paragraphs 3 and 7 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(**b**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975 and shall come into operation on 6th April 1975.

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

"the Act" means the Social Security (Northern Ireland) Act 1975;

"the Board" means the Attendance Allowance Board;

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

"a local office" means an office appointed by the Department as a local office for the purposes of the Act or of these regulations;

and other expressions have the same meanings as in the Act.

(3) Reference in these regulations—

(*a*) to a person's father, mother, son, daughter, brother or sister shall include reference 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;

(*b*) to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification;

(*c*) to a numbered regulation is, unless the context otherwise requires, a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(a) 1975 c. 15 (b) 1975 c. 18

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(c) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

PART II

RESIDENCE AND PRESENCE IN NORTHERN IRELAND

Entitlement conditions relating to residence and presence in Northern Ireland

2.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 35(1) of the Act as to the residence and presence in Northern Ireland in relation to any person in respect of any day shall be—

(*a*) that he is ordinarily resident in Northern Ireland; and

(*b*) that he is present in Northern Ireland; and

(*c*) that he has been present in Northern Ireland 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(d), that he has been present in Northern Ireland 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 Northern Ireland 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 (Northern Ireland) 1970(e), as amended(f), (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 Northern Ireland 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 paragraph (1)(*b*) and (*c*) a person who is absent from Northern Ireland on any day shall be treated as being present in Northern Ireland—

(*a*) if on that day he is—

(i) a merchant seaman within the meaning of the Family Allowances (Qualifications) Regulations (Northern Ireland) 1970, as amended(g); or

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

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(c) 1889 c. 63
(d) 1948 c. 56
(e) S.R. & O. (N.I.) 1970 No. 23 (p. 167)
(f) S.R. & O. (N.I.) 1970 No. 67 (p. 301)
(g) There is no amendment relevant to the subject matter of this paragraph.

(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 Northern Ireland, during such period as the Department may allow having regard to the circumstances of the case.

(3) For the purposes of paragraph (1)(*d*) and (*e*)—

(*a*) a person who is absent from Northern Ireland on any day shall be treated as being present in Northern Ireland if on that day he is a person mentioned in paragraph (2)(*a*);

(*b*) a child who does not satisfy the condition which applies to him shall be treated as having satisfied it if the person who may become entitled to the allowance, in accordance with regulation 6(4), satisfies either of the conditions or is a British subject whose place of birth is in the United Kingdom.

(4) Paragraph (1)(*f*) 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 tax year immediately preceding the tax year in which that day falls, he proves that the amount of his emoluments to which paragraph (1)(*f*) refers was less than his total income as defined in section 528 of the Income and Corporation Taxes Act 1970(**h**).

(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*) shall not apply to that person in respect of any subsequent day.

PART III

ADULTS IN HOSPITAL AND CERTAIN OTHER ACCOMMODATION

Adults in hospital

3. Subject to regulation 5, 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 Health and Personal Social Services (Northern Ireland) Order 1972(**i**), or by or on behalf of the Secretary of State, or by or on behalf of the Defence Council; or

(*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 Health and Personal Social Services (Northern Ireland) Order 1972, the Secretary of State or the Defence Council, in a hospital or similar institution not so maintained or administered;

(**h**) 1970 c. 10
(**i**) S.I. 1972/1265 (N.I. 14)

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

4. Subject to regulation 5, attendance allowance shall not be payable in respect of a person who has attained the age of 16 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.

Exception from regulations 3 *and* 4

5.—(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 3 or 4, 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)—

(*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 3 or 4 refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

CHILDREN

Modification of section 35(1) *to* (4) *of the Act in its application to children*

6.—(1) Subsections (1) to (4) of section 35 of the Act shall have effect in relation to a child subject to the modifications contained in the following provisions of this regulation.

(2) Subsection (1) shall have effect as if—

(*a*) for the words "if he satisfies" were substituted the words "in respect of a child who has attained the age of 2 and who satisfies or is treated as having satisfied";

(*b*) for the words "he is" in both places where they appear were substituted the words "the child is";

(*c*) 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)";

(*d*) after the word "others" in both places where that word appears, there were inserted the words "(being supervision substantially in excess of that normally required by a child of the same age and sex)".

(3) Subsections (2) and (3) shall have effect as if references to a certificate were construed as references to a certificate issued in respect of the child.

(4) The person who in any given case shall be entitled to an attendance allowance in respect of a child 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.

(5) Paragraph (4) 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 Department may in its 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 the other person otherwise establishes title to it; and

(*c*) attendance allowance to which a woman is entitled by virtue of the said paragraph (4) and who is living with her husband may be paid to her or to 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 Department may in its 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 sub-paragraph shall not apply where some other person would but for this sub-paragraph be awarded 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) In a case to which the provisions of paragraph (5)(*c*) have applied immediately before the woman dies or ceases to live with her husband and he continues to obtain payment of the attendance allowance, then for any period of payment for which under paragraph (4) he would have been entitled to the attendance allowance had he claimed it he shall be deemed, if he subsequently claims it, to have been so entitled.

Children in hospital and certain other accommodation

7.—(1) Section 35(6) of the Act (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—

(*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 (Northern Ireland 1966(j) 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 Act to that person or his spouse, any contribution required in respect of the child for the purposes of section 43(1)(*b*) and (2) or, as the case may be, 65(1)(*b*) and (2) or, 70(4) of the 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 (Northern Ireland) 1966 is payable in respect of the child as a child of that person's family; or

(*b*) the child is 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 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 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 an 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*), paragraph (1)(*a*) and (*c*) 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*) 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*) and the child is undergoing medical or other treatment as an in-patient—

(j) 1966 c. 8 (N.I.)

(*a*) in a hospital or similar institution mentioned in regulation 3 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) 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.

PART V

REVIEWS OF DETERMINATIONS

Application for reviews of determinations made by the Board

8.—(1) Subject to the provisions of paragraph (2), an application for a review, in pursuance of section 106(1)(*a*) or (*b*) of the Act, of a determination may be made by the claimant or the Department 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 Department, the Department shall send a copy of it to the claimant.

(2) If within 12 months of an application having been made as in paragraph (1), a further review is sought, it shall be a requirement for such review that leave of the Board to make the application is first obtained.

(3) 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 106(1) of the Act.

Reviews of determinations made by the Board

9.—(1) The prescribed period within which the Board may, in pursuance of section 106(1)(*b*) of the Act, 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 Department) 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 8(2), have reviewed a determination or have refused to review a determination, the claimant and the Department 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 a Commissioner.

PART VI

APPEALS

Appeals to a Commissioner on a question of law

10.—(1) Subject to the following provisions of this regulation, the claimant or the Department may appeal to a Commissioner, with his leave or that of another Commissioner, against a determination by the Board of any question of law arising on a review by the Board in pursuance of section 106(1) of the Act, or arising in connection with a refusal by the Board to review a determination made in pursuance of section 105(3) of the Act.

(2) An application for leave to appeal by virtue of paragraph (1) shall be made in writing to a 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 a 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) shall be delivered or sent to a local office, and where the application is made by the Department, the Department shall send a copy of it to the claimant; and in each case the Department shall send to a 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 11(5), 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 a 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.

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

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

11.—(1) If the Department or the claimant, as the case may be, makes a request to a 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 Department 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 Department and the claimant shall have the right to be present and to be heard at such a hearing and may be represented by counsel or solicitor or any other person.

(4) If any person to whom notice of hearing has been duly given in accordance with paragraph (2) 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 he thinks proper with a view to the determination of the application or appeal.

(5) Where a Commissioner, upon consideration of an application made to him in accordance with the provisions of regulation 10, 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 Department and the claimant has been given.

(6) A 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 a 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 a Commissioner may determine.

Commissioner's decisions

12.—(1) The decision of a 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 Department.

(2) The Department shall inform the Board of any such decision in which a 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

13. Section 116 of the Act (under which an appeal involving a question of law of special difficulty may be heard by a tribunal of Commissioners) shall apply in relation to an appeal under regulation 10(1) and, except where the context otherwise requires, any reference in regulation 11 or 12 to a Commissioner shall include a reference to such a tribunal.

Exercise of power to extend time limits

14. 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.

Transitional provisions

15.—(1) A certificate issued by the Attendance Allowance Board at any time before 6th April 1975 and which has not expired or been revoked before that date shall be treated as a certificate issued under section 35(2) of the Act.

(2) An award of attendance allowance made before 6th April 1975 and which has not terminated before that date, shall be treated as an award under the Act.

(3) An award of attendance allowance as in paragraph (2) based on a certificate having effect by virtue of paragraph (1) in relation to a person who, immediately before 6th April 1975, was a person living in accommodation 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, shall continue to have effect as if section 2(5) of the National Insurance Act 1972(k) and regulation 5 of the National Insurance (Attendance Allowance) Regulations (Northern Ireland) 1971(l), as amended(m) (adults in certain accommodation other than hospitals), continued to apply and section 35(6) of the Act and regulation 4 of these regulations did not apply.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 4th April 1975.

(L.S.)

C. G. Oakes
Assistant Secretary

(k) 1972 c. 57
(l) S.R. & O. (N.I.) 1971 No. 139 (p. 666)
(m) S.R. & O. (N.I.) 1972 No. 198 (p. 1099)

SCHEDULE Regulations 4 and 7(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).

(1) *Chapter or Number*	(2) *Short title*	(3) *Enactments*
1945 c. 6 (N.I.)	The Disabled Persons (Employment) Act (Northern Ireland) 1945.	Section 15.
1968 c. 34 (N.I.)	The Children and Young Persons Act (Northern Ireland) 1968.	Sections 51, 73, 99, 103, 114 and 121.
S.I. 1972/1263 (N.I. 12).	The Education and Libraries (Northern Ireland) Order 1972.	Articles 7(1), 23, 27(1) and 42, paragraphs 2(1) and 2(2) of Schedule 8.
S.I. 1972/1265 (N.I. 14).	The Health and Personal Social Services (Northern Ireland) Order 1972.	Articles 5, 7, 15 and 36—excluding temporary accommodation.

EXPLANATORY NOTE

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

These regulations replace the regulations made under the repealed National Insurance Acts and contain substantially the same provisions, with minor amendments.

Regulation 2 prescribes the conditions for entitlement to an attendance allowance relating to residence and presence in Northern Ireland. Regulations 3 to 5 provide that attendance allowance shall not be paid in respect of adults receiving free hospital in-patient treatment or for whom certain other accommodation is provided. Regulations 6 and 7 contain provisions to be applied to persons under 16 years of age. There is no title to attendance allowance in respect of a child under 2 years of age and for children over that age there is the additional medical requirement that the attention and supervision needed should be substantially in excess of that normally required by a child of the same age and sex. Normally the person entitled to the allowance in respect of a child is the child's mother but, if the child is not living with her, the father or other person with whom the child is living will be entitled.

Appeal to a National Insurance Commissioner lies on a question of law arising on review determinations made by the Attendance Allowance Board.

The regulations also contain transitional provisions.