1993 No. 165

SOCIAL SECURITY

The Social Security Benefits (Miscellaneous Amendments) Regulations (Northern Ireland) 1993

Made	*31st March 1993*
Coming into operation . .	*1st April 1993*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 67(2), 72(8), 122(1)(*a*), 131(1), 132(4)(*b*) and 133(2)(*c*) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and section 71(1)(*b*) of the Social Security Administration (Northern Ireland) Act 1992(**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 Benefits (Miscellaneous Amendments) Regulations (Northern Ireland) 1993 and shall come into operation on 1st April 1993, immediately following the coming into operation of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993(**c**).

(2) In these regulations—

"the Attendance Allowance Regulations" means the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**d**);

"the Disability Living Allowance Regulations" means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**e**);

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**f**).

Amendment of the Attendance Allowance Regulations

2.—(1) The Attendance Allowance Regulations shall be amended in accordance with paragraphs (2) and (3) of this regulation.

(2) In regulation 7 (persons in certain accommodation other than hospitals)—

(a) 1992 c. 7
(b) 1992 c. 8
(c) S.R. 1993 No. 149
(d) S.R. 1992 No. 20; amended by S.R. 1992 Nos. 143 and 481 and S.R. 1993 No. 149
(e) S.R. 1992 No. 32; amended by S.R. 1992 Nos. 144 and 481 and S.R. 1993 No. 149
(f) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 318, S.R. 1990 No. 131, S.R. 1991 Nos. 46, 338 and 345, S.R. 1992 No. 403 and S.R. 1993 No. 149

(*a*) in paragraph (1)(*a*) "7," shall be omitted;

(*b*) in paragraph (3)(*b*) after "accommodation" there shall be inserted ", and has a preserved right for the purposes of regulation 5(5) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993";

(*c*) in paragraph (4) at the beginning there shall be inserted "Subject to paragraph (4A),"; and

(*d*) after paragraph (4) there shall be inserted the following paragraph—

"(4A) Paragraph (4)(*b*) shall apply in the case of a person who does not have a preserved right for the purposes of regulation 5(5) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993 as if the words from "and at least 3 other persons" to "their relatives" were omitted.".

(3) In regulation 8(**a**) (exemption from regulations 6 and 7)—

(*a*) in paragraph (4) after "shall not apply" there shall be inserted ", except in a case to which paragraph (7) applies,";

(*b*) in paragraph (5) after "or other institution" there shall be inserted "whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages,";

(*c*) in paragraph (6) after "shall not apply" there shall be inserted ", except in a case to which paragraph (7) applies,"; and

(*d*) after paragraph (6) there shall be added the following paragraph—

"(7) This paragraph applies in the case of a person who is in residential accommodation provided under Article 15 of the Order(**b**) which is managed by a Health and Social Services Board.".

Amendment of the Disability Living Allowance Regulations

3.—(1) The Disability Living Allowance Regulations shall be amended in accordance with paragraphs (2) and (3) of this regulation.

(2) In regulation 9 (persons in certain accommodation other than hospitals)—

(*a*) in paragraph (1)(*a*) "7," shall be omitted;

(*b*) in paragraph (4) for "a Health and Social Services Board or the Department" there shall be substituted "an Education and Library Board or the Department of Education";

(*c*) in paragraph (6)(*c*) after "accommodation" there shall be inserted ", and has a preserved right for the purposes of regulation 4(4) of the Social Security Benefits (Amendments Consequential Upon the

(**a**) Paragraphs (4), (5) and (6) were added by S.R. 1993 No. 149

(**b**) Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))

Introduction of Community Care) Regulations (Northern Ireland) 1993";

(*d*) in paragraph (7) at the beginning there shall be inserted "Subject to paragraph (7A),"; and

(*e*) after paragraph (7) there shall be inserted the following paragraph—

"(7A) Paragraph (7)(*b*) shall apply in the case of a person who does not have a preserved right for the purposes of regulation 4(4) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993 as if the words from "and at least 3 other persons" to "their relatives" were omitted.".

(3) In regulation 10(**a**) (exemption from regulations 8 and 9)—

(*a*) in paragraph (6) after "shall not apply" there shall be inserted ", except in a case to which paragraph (9) applies,";

(*b*) in paragraph (7) after "or other institution" there shall be inserted "whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages,";

(*c*) in paragraph (8) after "shall not apply" there shall be inserted ", except in a case to which paragraph (9) applies,"; and

(*d*) after paragraph (8) there shall be added the following paragraph—

"(9) This paragraph applies in the case of a person who is in residential accommodation provided under Article 15 of the Order which is managed by a Health and Social Services Board.".

Amendment of the Income Support Regulations

4.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (5) of this regulation.

(2) In regulation 6 (persons not treated as engaged in remunerative work) for paragraph (*g*) there shall be substituted the following paragraph—

"(*g*) he is in employment, and—

(i) lives in, or is temporarily absent from, a residential care home, a nursing home or residential accommodation, and either

(ii) his, or his partner's, applicable amount falls to be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care and nursing homes) or, as the case may be, paragraph 9, 10 to 10C, 13, 14 or 16 of Schedule 7 (applicable amounts in special cases), or

(iii) he or his partner satisfies the conditions specified in paragraph 2A(2) of Part I of Schedule 2 (conditions of entitlement for a residential allowance);".

(**a**) Paragraphs (6), (7) and (8) were added by S.R. 1993 No. 149

(3) In regulation 21 (special cases)—

(*a*) after paragraph (3A) there shall be inserted the following paragraphs—

"(3B) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation arranged under Article 36 of the 1972 Order(**a**), the definition of "residential accommodation" in paragraph (3) shall have effect in relation to that case as if for "accommodation provided or arranged by the Department under Article 15 or 36 of the 1972 Order in a home owned or managed by a Health and Social Services Board" there were substituted "accommodation arranged by the Department under Article 36 of the 1972 Order".

(3C) In a case where on 31st March 1993 a person was in or was temporarily absent from accommodation provided by the Department under Article 15 of the 1972 Order, the definition of "residential accommodation" in paragraph (3) shall have effect in relation to that case as if for "accommodation provided or arranged by the Department under Article 15 or 36 of the 1972 Order" there were substituted "accommodation arranged by or provided by the Department under Article 15 of the 1972 Order".".

(*b*) after paragraph (4A) there shall be inserted the following paragraph—

"(4B) In the case of a person who on 31st March 1993 was either in, or only temporarily absent from, residential accommodation within the meaning of regulation 21(3) as then in operation, paragraph (4) shall apply as if sub-paragraph (*b*) were omitted.".

(4) In Schedule 2 (applicable amounts) in paragraph 2A(2) after head (*a*) there shall be inserted the following head—

"(*aa*) the person both requires personal care and is provided with it in the home and for this purpose "personal care" means care which includes assistance with bodily functions where such assistance is required;".

(5) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(*a*) for paragraph 9 there shall be substituted the following paragraph—

"9. Any attendance allowance or the care component of a disability living allowance, but, where the claimant's applicable amount falls to be calculated in accordance with Part I of Schedule 4 only to the extent that it exceeds the amount for the time being specified as the higher rate of attendance allowance for the purposes of section 65(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or, as the case may be, the highest rate of the care component of a disability living allowance for the purposes of section 72(4)(*a*) of that Act.";

(**a**) Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992

(*b*) in paragraph 15—

(i) in sub-paragraph (1) for "sub-paragraph (3)" there shall be substituted "sub-paragraphs (3) and (6)", and

(ii) after sub-paragraph (5) there shall be added the following sub-paragraph—

"(6) This sub-paragraph shall apply to a claimant in a residential care home or nursing home only if he has a preserved right for the purposes of regulation 19(1ZB) or (1ZC).''; and

(*c*) after paragraph 15 there shall be inserted the following paragraph—

"15A.—(1) Subject to sub-paragraphs (2) to (4), in the case of a claimant placed in a residential care home or nursing home by the Department under Article 36 of the 1972 Order, any charitable payment or voluntary payment made or due to be made at regular intervals.

(2) This paragraph shall apply only where—

(*a*) the claimant was placed in the residential care home or nursing home by the Department because the home was the preferred choice of the claimant, and

(*b*) the cost of the accommodation was in excess of what the Department would normally expect to pay having regard to the needs of the claimant as assessed by the Department.

(3) This paragraph shall not apply in the case of a person whose applicable amount falls to be calculated under regulation 19 (persons in residential care homes or nursing homes with preserved rights).

(4) The amount to be disregarded under sub-paragraph (1) shall not exceed the difference between the actual cost of the accommodation provided by the Department and the cost the Department would normally incur for a person with the particular needs of the claimant.''.

Revocations

5. The following provisions are hereby revoked—

(*a*) regulation 12 of the Income Support (General) (Amendment) Regulations (Northern Ireland) 1991(**a**);

(*b*) regulation 4(*b*) of the Income Support (General) (Amendment No. 3) Regulations (Northern Ireland) 1991(**b**); and

(*c*) paragraph 6(2) and (15)(*a*) of Schedule 2 to the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993(**c**).

(a) S.R. 1991 No. 46
(b) S.R. 1991 No. 338
(c) S.R. 1993 No. 149

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 31st March 1993.

(L.S.) *A. Devlin*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations contain amendments to a number of social security benefit regulations arising out of the changes to care in the community which are introduced on 1st April 1993.

Regulation 2 amends the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992. Under the existing regulations persons in residential care or nursing homes who pay the whole cost of the accommodation themselves may also receive attendance allowance. Regulation 2(2) provides for those residing in such homes before 1st April 1993 to retain that right. Regulation 3 amends the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 so as to make similar provisions in relation to disability living allowance and to make a minor amendment to the provision relating to accommodation in which the cost is or may be borne under the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)) (regulation 3(2)).

Regulations 2 and 3 also provide that attendance allowance and disability living allowance, respectively, are not payable to persons in accommodation provided under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (regulations 2(3) and 3(3)).

Regulation 4 makes specific provisions in the income support scheme for persons living in or temporarily absent from residential accommodation on 31st March 1993. They also provide that some or all of any charitable or voluntary payments made to enable a person to live in a home of his choice, are to be disregarded in determining the income of a resident in a residential care or nursing home (regulation 4(5)).

Regulation 5 contains consequential revocations.

These 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 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.