STATUTORY RULES OF NORTHERN IRELAND

# 2016 No. 229

# SOCIAL SECURITY

## The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations (Northern Ireland) 2016

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| *Made - - - -* | *3rd May 2016* |
| *Laid before Parliament* | *10th May 2016* |
| *Coming into operation in accordance with regulation 1* | |

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 64(1), 67(2), 70(4), 71(6), 72(8), 113(1)(a) and (2), 121(1) and 171(1), (3)(a), (b)(ii) and (iii), and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and sections 71(1)(b) and 165(1) of the Social Security Administration (Northern Ireland) Act 1992(**2**).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(**3**).

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regulations (Northern Ireland) 2016 and, subject to paragraph (2), come into operation on 20th June 2016.

(2) In the case of a person who has an existing award on 19th June 2016—

(a) regulations 2(2)(a)(ii), 3(2)(a)(ii) and 4(3)(a)(ii) come into operation—

(i) on the day immediately following the termination day; or

(**1**) 1992 c. 7. Section 64(1) was amended by paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and is amended by paragraph 4(2) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)), sections 67(2) and 72(8) were substituted by section 54 of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21). Section 121(1) is cited for the meaning it gives to 'prescribe'.

(**2**) 1992 c. 8. Section 71(1) was amended by paragraph 32(2) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 4(7)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7).

(**3**) S.I. 2015/2006 (N.I. 1).

(ii) on the day on which the first revision or supersession is made on or after 20th June 2016,

whichever is earlier;

(b) regulations 2(2)(a)(iii), 3(2)(a)(iii) and 4(3)(a)(iii) come into operation—

(i) on the day immediately following the termination day; or

(ii) 104 weeks after 20th June 2016,

whichever is earlier;

(c) regulations 3(2)(c) and 4(3)(c) come into operation—

(i) on the day immediately following the termination day; or

(ii) 26 weeks after 20th June 2016,

whichever is earlier.

(3) In these Regulations—

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"existing award" means an award of—

(a) attendance allowance under section 64 of the Contributions and Benefits Act(**4**);

(b) carer's allowance under section 70 of that Act(**5**); or

(c) disability living allowance under section 71 of that Act(**6**);

"revision" means a revision under Article 10 of the Social Security (Northern Ireland) Order 1998(**7**);

"supersession" means a supersession under Article 11 of the Social Security (Northern Ireland) Order 1998(**8**);

"termination day" means the day on which the existing award terminates.

**Amendment of the Social Security (Invalid Care Allowance) Regulations**

**2.**—(1) The Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(**9**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 9 (conditions relating to residence and presence in Northern Ireland)—

(a) in paragraph (1)(**10**)—

(i) after "this regulation" insert "and regulations 9A and 9B of these regulations";

(ii) in sub-paragraph (a), for "ordinarily resident in Northern Ireland", substitute "habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands"; and

(**4**) Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 and paragraph 4 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(**5**) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370, Articles 2(2) and 3 of S.R. 2002 No. 321, regulation 2(3) of S.R. 2011 No. 356, Article 2(2) of S.I. 2013/3233 and is amended by regulation 5(2) of S.R. 2016 No. 228.

(**6**) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**7**) S.I. 1998/1506 (N.I. 10).

(**8**) Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

(**9**) S.R. 1976 No. 99. Relevant amending Regulations are S.R. 1977 No. 73, S.R. 1996 Nos. 11 and 521, S.R. 2000 No. 71, S.R. 2002 No. 323 and S.R. 2005 No. 536.

(**10**) Paragraph (1) was amended by regulation 2(a) of S.R. 1996 No. 11, regulation 2(8) of S.R. 1996 No. 521, regulation 3(a) of S.R. 2000 No. 71 and paragraph 1 of the Schedule to S.R. 2002 No. 323.

(iii) in sub-paragraph (c), for "26 weeks in the 12 months", substitute "104 weeks in the 156 weeks"; and

(b) for paragraph (3)(**11**) substitute—

"(3) Notwithstanding that on any day a person is absent from Northern Ireland, he shall be treated as though he were—

(a) habitually resident and present in Northern Ireland for the purposes of paragraphs (1)(a) to (c) if—

(i) his absence is by reason only of the fact that on that day he is abroad in his capacity as a serving member of the forces and for this purpose "serving member of the forces" has the meaning given in regulation 1(2) of the Social Security (Contributions) Regulations 2001(**12**) ("the 2001 Regulations"); or

(ii) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person; and

(b) present in Northern Ireland for the purposes of paragraph (1)(b) and (c) of this regulation if his absence is by reason only of the fact that on that day he is—

(i) abroad in his capacity as an airman within the meaning of regulation 111 of the 2001 Regulations or a mariner within the meaning of regulation 115 of those Regulations; or

(ii) in prescribed employment in connection with continental shelf operations within the meaning of regulation 114(1) of the 2001 Regulations.".

(3) After regulation 9 insert—

"**Persons residing in Northern Ireland to whom a relevant EU Regulation applies**

**9A.**—(1) Regulation 9(1)(c) of these regulations shall not apply where on any day—

(a) the person is habitually resident in Northern Ireland;

(b) a relevant EU Regulation applies; and

(c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) of this regulation and regulation 9B of these regulations, "relevant EU Regulation" has the meaning given by Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015(**13**).

**Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies**

**9B.** Regulation 9(1)(a) to (c) of these regulations shall not apply where on any day—

(a) the person is habitually resident in—

(i) an EEA state other than the United Kingdom; or

(**11**) Paragraph (3) was substituted by regulation 17 of S.R. 1977 No. 73 and amended by paragraph 5 of Schedule 3 to S.R. 2005 No. 536.
(**12**) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.
(**13**) S.I. 2015/2006 (N.I. 1).

(ii) Switzerland;

(b) a relevant EU Regulation applies; and

(c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.".

**Amendment of the Social Security (Attendance Allowance) Regulations**

**3.**—(1) The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**14**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (conditions as to residence and presence in Northern Ireland)—

(a) in paragraph(1)(**15**)—

(i) after "this regulation" insert "and regulations 2A and 2B";

(ii) in sub-paragraph (a)(i), for "ordinarily resident in Northern Ireland", substitute "habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands"; and

(iii) in sub-paragraph (a)(iii), for "26 weeks in the 52", substitute "104 weeks in the 156";

(b) in paragraph (2)—

(i) in sub-paragraph (a)(i), for "the Social Security (Contributions) Regulations 1979", substitute "the Social Security (Contributions) Regulations 2001 ("the 2001 Regulations")"; and

(ii) in sub-paragraph (a)(ii), for "regulation 80" to the end, substitute "regulation 111 and regulation 115 respectively of the 2001 Regulations,";

(c) for paragraph (2)(d), substitute—

"or

(d) he is temporarily absent from Northern Ireland and that absence has not lasted for a continuous period exceeding 13 weeks.";

(d) omit paragraph (2)(e) and the preceding "or";

(e) after paragraph (3) add—

"(4) A person shall be treated as habitually resident in Northern Ireland for the purpose of paragraph (1)(a)(i) where—

(a) he is resident outside Northern Ireland in his capacity as a serving member of the forces and for this purpose "serving member of the forces" has the meaning given in regulation 1(2) of the 2001 Regulations; or

(b) he is living with a person mentioned in sub-paragraph (a) and is the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person.";

(f) after new paragraph (4) add—

"(5) Where a person is temporarily absent from Northern Ireland, he is treated as present in Northern Ireland for the purposes of paragraph (1)(a)(ii) and (iii) for the first 26 weeks of that absence, where—

(**14**) S.R. 1992 No. 20. Relevant amending Regulations are S.R. 1994 No. 263, S.R. 1997 No. 69, S.R. 2000 No. 71 and S.R. 2007 No. 431.

(**15**) Paragraph (1) was amended by regulation 2 of S.R. 1997 No. 69 and regulation 8(a) of S.R. 2000 No. 71.

(a) this absence is solely in connection with arrangements made for the medical treatment of him for a disease or bodily or mental disablement which commenced before he left Northern Ireland; and

(b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—

(i) outside Northern Ireland,

(ii) during the period whilst he is temporarily absent from Northern Ireland, and

(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment, and

"medical treatment" means medical, surgical or rehabilitative treatment (including any course or diet or regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly."; and

(g) after new paragraph (5) add—

"(6) For the purpose of paragraphs (2)(d) and (5) a person is "temporarily absent" if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks.".

(3) After regulation 2 insert—

"**Persons residing in Northern Ireland to whom a relevant EU Regulation applies**

**2A.**—(1) Regulation 2(1)(a)(iii) shall not apply where on any day—

(a) the person is habitually resident in Northern Ireland;

(b) a relevant EU Regulation applies; and

(c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.

(2) For the purposes of paragraph (1)(b) and regulation 2B, "relevant EU Regulation" has the meaning given by Article 89(2) of the Welfare Reform (Northern Ireland) Order 2015.

**Persons residing in an EEA state other than the United Kingdom or in Switzerland to whom a relevant EU Regulation applies**

**2B.** Regulation 2(1)(a)(i) to (iii) shall not apply where on any day—

(a) the person is habitually resident in—

(i) an EEA state other than the United Kingdom; or

(ii) Switzerland;

(b) a relevant EU Regulation applies; and

(c) the person can demonstrate a genuine and sufficient link to the United Kingdom social security system.".

(4) In regulation 7(**16**) (persons in care homes)—

(a) in paragraph (2)—

(i) omit "or" at the end of sub-paragraph (b); and

(ii) after sub-paragraph (b), insert—

(**16**) Regulation 7 was substituted by regulation 2(2) of S.R. 2007 No. 431.