STATUTORY RULES OF NORTHERN IRELAND

2007 No. 431

SOCIAL SECURITY

The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 2007

Made - - - -	*8th October 2007*
Coming into operation	*29th October 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 67(2), 72(8) and 171 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and now vested in it(**2**).

This Rule contains only regulations made consequential upon section 54 of the Welfare Reform Act (Northern Ireland) 2007(**3**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 29th October 2007.

(2) In these Regulations—

"the Attendance Allowance Regulations" means the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**4**);

"the Disability Living Allowance Regulations" means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**5**).

(**1**) 1992 c. 7; sections 67 and 72 are amended by section 54 of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), section 72 was amended by Article 64(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 171 was amended by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)), paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 28 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) 2007 c. 2 (N.I.)

(**4**) S.R. 1992 No. 20; relevant amending Regulations are S.R. 1993 Nos. 149 and 165, S.R. 2000 No. 195, S.R. 2002 Nos. 31 and 132, S.R. 2003 No. 397 and S.R. 2005 No. 458

(**5**) S.R. 1992 No. 32; relevant amending Regulations are S.R. 1992 Nos. 144 and 481, S.R. 1993 Nos. 149 and 165, S.R. 1994 Nos. 65 and 263, S.R. 2000 No. 195, S.R. 2002 Nos. 31 and 132, S.R. 2003 No. 397 and S.R. 2005 No. 458

Amendment of the Attendance Allowance Regulations

2.—(1) The Attendance Allowance Regulations are amended in accordance with paragraphs (2) and (3).

(2) For regulation 7(**6**) (persons in certain accommodation other than hospitals) substitute—

"**Persons in care homes**

7.—(1) Subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—

(a) Article 5, 15 or 36 of the Order(**7**);

(b) the Mental Health (Northern Ireland) Order 1986(**8**); or

(c) any other enactment relating to persons under disability.

(3) In this regulation and in regulation 8 references to the costs of any qualifying services shall not include the cost of—

(a) domiciliary services, including personal care, provided in respect of a person in a private dwelling;

(b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability;

(c) improvements made to, or furniture or equipment provided for, a care home in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature;

(d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds;

(e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or

(f) health services provided pursuant to the Order.

(4) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (5) and (6), be deemed—

(a) to begin on the day after the day on which he enters a care home; and

(b) to end on the day before the day on which he leaves a care home.

(**6**) Regulation 7 was amended by regulation 5(3) of S.R. 1993 No. 149, regulation 2(2)(a) of S.R. 1993 No. 165, regulation 2 of S.R. 2002 No. 31, regulation 4(2) of S.R. 2002 No. 132, regulation 2(2) of S.R. 2003 No. 397 and regulation 7 of S.R. 2005 No. 458

(**7**) Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)), Schedule 5 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)), Article 15 was amended by Part II of Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)), paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)), section 121(2) of the Immigration and Asylum Act 1999 (c. 33) and the Schedule to the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (c. 5 (N.I.)) and Article 36 was amended by section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N.I.)) and Article 45 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9))

(**8**) S.I. 1986/595 (N.I. 4)

(5) Where a person enters a care home from a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.

(6) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home.".

(3) In regulation 8 (exemption from regulations 6 and 7) for paragraph (6)(**9**) substitute—

"(6) Regulation 7 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—

(a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with assistance from another person or a charity; or

(b) on his behalf by another person or a charity.".

Amendment of the Disability Living Allowance Regulations

3.—(1) The Disability Living Allowance Regulations are amended in accordance with paragraphs (2) and (3).

(2) For regulation 9(**10**) (persons in certain accommodation other than hospitals) substitute—

"**Persons in care homes**

9.—(1) Except in the cases specified in paragraphs (3) to (5), and subject to regulation 10, a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—

(a) Article 5, 15 or 36 of the Order;

(b) the Mental Health (Northern Ireland) Order 1986; or

(c) any other enactment relating to persons under disability or to young persons or to education or training.

(3) Paragraph (2)(c) shall not apply in circumstances where any of the costs of the qualifying services provided for him are borne wholly or partly out of public or local funds by virtue of—

(a) Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986(**11**);

(b) Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(**12**);

(c) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(**13**); or

(**9**) Paragraph (6) was added by regulation 5(4)(b) of S.R. 1993 No. 149 and amended by regulation 2(5)(a) of S.R. 2000 No. 195 and regulation 2(3) of S.R. 2003 No. 397

(**10**) Regulation 9 was amended by regulation 2(3) of S.R. 1992 No. 144, regulation 3(3)(b) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1993 No. 149, regulation 3(2) of S.R. 1993 No. 165, paragraph 1(b) of Schedule 17 to S.R. 1994 No. 65, regulation 3(2) of S.R. 1994 No. 263, regulation 3 of S.R. 2002 No. 31, regulation 5(2) of S.R. 2002 No. 132, regulation 3(2) of S.R. 2003 No. 397 and regulation 8 of S.R. 2005 No. 458

(**11**) S.I. 1986/594 (N.I. 3); Article 50 was amended by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) and Article 51 was substituted by Part II of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))

(**12**) S.I. 1990/1506 (N.I. 11) which was repealed by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 subject to transitional and savings provisions in Articles 3 to 6 of the Education (Student Support) (Northern Ireland) Order 1998 (Commencement and Transitional Provisions) Order (Northern Ireland) 1998 (S.R. 1998 No. 306 (C. 14))

(**13**) S.I. 1993/2810 (N.I. 12); Article 30 was amended by Schedule 4 to the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)) and Article 11(2) of the Colleges of Education (Northern Ireland) Order 2005 (S.I. 2005/1963 (N.I. 13))