1994 No. 263

SOCIAL SECURITY

The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 1994

Made	*6th July 1994*
Coming into operation . .	*1st August 1994*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 67(2), 72(8) and 73(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and section 71(1) 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 (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 1994 and shall come into operation on 1st August 1994.

(2) In these regulations—

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

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

Amendment of the Attendance Allowance Regulations

2.—(1) The Attendance Allowance Regulations shall be amended in accordance with paragraphs (2) to (6) of this regulation.

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

(*a*) in paragraph (1) for "regulation 8" there shall be substituted "regulation 7A and 8";

(**a**) 1992 c. 7
(**b**) 1992 c. 8
(**c**) S.R. 1992 No. 20; relevant amending regulations are S.R. 1992 No. 143, S.R. 1993 Nos. 149 and 165 and S.R. 1994 No. 65
(**d**) S.R. 1992 No. 32; relevant amending regulations are S.R. 1992 Nos. 144 and 481, S.R. 1993 Nos. 149, 165 and 340 and S.R. 1994 No. 65
(**e**) Paragraph (1) was amended by S.R. 1993 Nos. 149 and 165, paragraph (3) was amended by S.R. 1993 No. 165 which also inserted paragraph (4A)

(*b*) in paragraph (3)(*b*) for the words from "", and has a preserved right'' to ''Regulations (Northern Ireland) 1993'' there shall be substituted "", and is a person to whom regulation 7A applies''; and

(*c*) in paragraph (4A) for the words from ''who does not have a preserved right'' to ''Regulations (Northern Ireland) 1993'' there shall be substituted ''to whom regulation 7A does not apply''.

(3) After regulation 7 there shall be inserted the following regulation—

''*Persons to whom regulations 7 and 8 apply with modifications*

7A.—(1) This regulation applies where a person satisfies paragraph 1 of Schedule 2.

(2) Where this regulation applies—

(*a*) regulation 7 shall have effect as if after paragraph (1) there were inserted the following paragraph—

''(1A) Paragraph (1)(*b*), in so far as it relates to enactments relating to persons under a disability not referred to in paragraph (1)(*a*), and paragraph (1)(*c*) shall not apply in the case of a person who is terminally ill where the Department has been informed of that fact—

(*a*) on a claim for an attendance allowance;

(*b*) on an application for a review of an award of attendance allowance; or

(*c*) in writing in connection with an award of, or a claim for, or an application for a review of an award of, attendance allowance.''; and

(*b*) regulation 8(**a**) shall have effect as if—

(i) in paragraph (1) for ''Subject to paragraphs (2) to (6)'' there were substituted ''Subject to paragraph (3)''; and

(ii) paragraphs (4) to (7) were omitted.''.

(4) After regulation 8 (exemption from regulations 6 and 7) there shall be inserted the following regulations—

''*Adjustment of allowance where medical expenses are paid from public funds under war pensions instruments*

8A.—(1) In this regulation—

''article 25B'' means article 25B of the Personal Injuries (Civilians) Scheme 1983(**b**) (medical expenses) and includes that article as applied by article 48B of that Scheme;

(**a**) Paragraph (1) was amended by S.R. 1992 No. 143, paragraphs (4), (5) and (6) were added by S.R. 1993 No. 149 and amended by S.R. 1993 No. 165 which also added paragraph (7) which in turn was amended by S.R. 1994 No. 65

(**b**) S.I. 1983/686; article 25B was inserted by article 6 of S.I. 1984/1289 and amended by article 7 of S.I. 1993/480, article 48B was added by article 11 of S.I. 1984/1289

"article 26" means article 26 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(a) (medical expenses);

and in this regulation and regulation 8B,

"relevant accommodation" means accommodation provided as a necessary ancillary to nursing care where the medical expenses involved are wholly borne by the Secretary of State pursuant to article 25B or article 26.

(2) This regulation applies where a person is provided with relevant accommodation.

(3) Subject to regulation 8B, where this regulation applies and there are payable in respect of a person both a payment under either article 25B or article 26 and an attendance allowance, the allowance shall be adjusted by deducting from it the amount of the payment under article 25B or article 26, as the case may be, and only the balance shall be payable.

Exemption from regulation 8A

8B.—(1) Subject to paragraphs (2) and (3), regulation 8A shall not apply to a person in respect of the first 28 days of any period during which the amount of any attendance allowance would be liable to be adjusted by virtue of regulation 8A(3).

(2) For the purposes of paragraph (1), two or more distinct periods separated by an interval not exceeding 28 days, or by two or more such intervals, shall be treated as a continuous period equal in duration to the aggregate of such distinct periods and ending on the last day of the later or last such period.

(3) For the purposes of this paragraph, a day is a relevant day in relation to a person if it fell not earlier than 28 days before the first day on which he was provided with relevant accommodation; and either—

(*a*) was a day when he was undergoing medical treatment in a hospital or similar institution in any of the circumstances mentioned in regulation 6; or

(*b*) was a day when he was, or would but for regulation 8 have been, prevented from receiving an attendance allowance by virtue of regulation 7(1),

and where there is in relation to a person a relevant day, paragraph (1) shall have effect as if for "28 days" there were substituted such lesser number of days as is produced by subtracting from 28 the number of relevant days in his case.".

(5) In regulation 9 for "the Schedule" there shall be substituted "Schedule 1" and the existing Schedule shall be numbered as Schedule 1.

(6) After Schedule 1 there shall be added Schedule 2 as set out in Schedule 1 to these regulations.

(a) S.I. 1983/883; relevant amending instruments are S.I. 1993/598

Amendment of the Disability Living Allowance Regulations

3.—(1) The Disability Living Allowance Regulations shall be amended in accordance with paragraphs (2) to (6) of this regulation.

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

(*a*) in paragraph (1) for ''regulation 10'' there shall be substituted ''regulations 9A and 10'';

(*b*) in paragraph (6)(*c*) for the words from '', and has a preserved right'' to ''Regulations (Northern Ireland) 1993'' there shall be substituted '', and is a person to whom regulation 9A applies''; and

(*c*) in paragraph (7A) for the words from ''who does not have a preserved right'' to ''Regulations (Northern Ireland) 1993'' there shall be substituted ''to whom regulation 9A does not apply''.

(3) After regulation 9 there shall be inserted the following regulation—

''*Persons to whom regulations 9 and 10 apply with modifications*

9A.—(1) This regulation applies where a person satisfies paragraph 1 of Schedule 2A.

(2) Where this regulation applies—

(*a*) regulation 9 shall have effect as if after paragraph (2) there were inserted the following paragraph—

''(2A) Paragraph (1)(*b*), in so far as it relates to enactments relating to persons under a disability or to education or training not referred to in paragraph (1)(*a*), and paragraph (1)(*c*) shall not apply in the case of a person who is terminally ill where the Department has been informed of that fact—

(*a*) on a claim for a disability living allowance which is attributable to the care component;

(*b*) on an application for a review of an award of disability living allowance which is attributable to the care component; or

(*c*) in writing in connection with an award of, or a claim for, or an application for a review of an award of, the care component of a disability living allowance.''; and

(*b*) regulation 10(**b**) shall have effect as if—

(i) in paragraph (1) for ''Subject to paragraphs (2) to (8)'' there were substituted ''Subject to paragraphs (2) and (3)''; and

(ii) paragraphs (6) to (9) were omitted.''.

(**a**) Paragraph (1) was amended by S.R. 1992 No. 481 and S.R. 1993 No. 165, paragraph (1A) was inserted by S.R. 1992 No. 481, paragraph (2) was amended by S.R. 1994 No. 65, paragraph (4) was amended by S.R. 1993 No. 165, paragraph (5) was omitted by S.R. 1993 No. 149, paragraph (6) was amended by S.R. 1993 No. 165 and paragraph (7A) was inserted by S.R. 1993 No. 165

(**b**) Paragraph (1) was amended by S.R. 1993 No. 149, paragraph (4) was amended by S.R. 1992 No. 144, paragraphs (6), (7) and (8) were inserted by S.R. 1993 No. 149 and amended by S.R. 1993 No. 165 which also added paragraph (9) which in turn was amended by S.R. 1994 No. 65