STATUTORY RULES OF NORTHERN IRELAND

1992 No. 78

SOCIAL SECURITY

The Disability Working Allowance (General) Regulations (Northern Ireland) 1992

Made - - - -	*2nd March 1992*
Coming into operation	*7th April 1992*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(1), (5)(bb), (6A)(d), (6C) to (6F), (11) and (12), 22(3B) and (6)(aa), 23(1) and (5) to (9) and 28B(2) and (4) of the Social Security (Northern Ireland) Order 1986(**1**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Disability Working Allowance (General) Regulations (Northern Ireland) 1992 and shall come into operation on 7th April 1992.

Interpretation

2. In these regulations—

"the Order" means the Social Security (Northern Ireland) Order 1986;

(**1**) S.I. 1986/1888 (N.I. 18); Article 21(1) was amended by Article 8(2) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S.I. 1991/1712 (N.I. 17)), paragraph (5)(bb) was inserted by Article 10(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraphs (6A) and (6C) to (6F) were inserted by Article 8(4) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraph (11) was amended by Article 7(1) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and Article 8(6) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991, paragraph (12) was amended by Article 15(2) of the Social Security (Northern Ireland) Order 1989 and Article 8(7) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 22(3B) was inserted by Article 8(8) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 and paragraph (6)(aa) was inserted by Article 8(9) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 28B was inserted by Article 9 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991. Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the regulation making powers conferred by this Order; section 155(3A) was inserted by Article 63(1)

"adjudication officer" means an officer appointed in accordance with section 97(1) of the principal Act(**2**);

"assessment period" means such period as is prescribed in regulations 16 to 19 over which income falls to be calculated;

"attendance allowance" means—

(a) an attendance allowance under section 35 of the principal Act(**3**);

(b) an increase of disablement pension under section 61 or 63 of that Act(**4**);

(c) a payment under regulations made in exercise of the power conferred by section 150(3)(b) of that Act;

(d) a payment analogous to a payment by way of an increase of an allowance in respect of constant attendance under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(**5**);

(e) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(**6**) or any analogous payment; or

(f) any payment based on need for attendance which is paid as part of a war disablement pension;

"child" has the meaning assigned to it by Article 21(11) of the Order;

"claim" means a claim for disability working allowance;

"claimant" means a person claiming disability working allowance;

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

"community charge benefit" means community charge benefit under Part II of the Social Security Act 1986(**7**);

"concessionary payment" means a payment made under arrangements made by the Department with the consent of the Department of Finance and Personnel which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit under the principal Act, the Order or the Child Benefit (Northern Ireland) Order 1975(**8**) are charged;

"date of claim" means the date on which the claimant makes, or is treated as making, a claim for disability working allowance;

"earnings" has the meaning prescribed in regulation 21 or, as the case may be, regulation 24;

"employed earner" means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be,

(**2**) Section 97(1) was substituted by paragraph 1 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17)) and amended by paragraph 3(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))

(**3**) Section 35 was amended by Article 3 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 8 of Schedule 1 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), Article 3 of the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I.2)), paragraph 5 of Schedule 8 to the Social Security (Northern Ireland) Order 1989, Article 3(1) and (2) of the Social Security (Northern Ireland) Order 1990 and Article 4(1) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**4**) Section 61 was amended by paragraph 6 of Schedule 3 to the Social Security (Northern Ireland) Order 1986

(**5**) 1975 c. 16; section 5 was amended by section 16(8)(a) and (10) of the Social Security Act 1990 (c. 27)

(**6**) S.I. 1983/686; the relevant amending instrument is S.I. 1984/1675

(**7**) 1986 c. 50; relevant amending provision is Schedule 10 to the Local Government Finance Act 1988 (c. 41)

(**8**) S.I. 1975/1504 (N.I. 16)

chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E;

"the Independent Living Fund" means the charitable trust established out of funds provided by the Secretary of State for Social Security for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

"lone parent" means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

"the Macfarlane (Special Payments) Trust" means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State for Social Security, for the benefit of certain persons suffering from haemophilia;

"the Macfarlane (Special Payments) (No. 2) Trust" means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State for Social Security, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

"the Macfarlane Trust" means the charitable trust, established partly out of funds provided by the Secretary of State for Social Security to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

"mobility allowance" means an allowance under section 37A of the principal Act(**9**);

"mobility supplement" means any supplement under Article 26A of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(**10**) including such a supplement by virtue of any other scheme or order or under Article 25A of the Personal Injuries (Civilians) Scheme 1983(**11**);

"net earnings" means such earnings as are calculated in accordance with regulation 22;

"net profit" means such profit as is calculated in accordance with regulation 25;

"occupational pension" means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

"partner" means, where a claimant—

(a) is a member of a married or unmarried couple, the other member of that couple;

(b) is married polygamously to two or more members of the same household, any such member;

"payment" includes a part of a payment;

"policy of life insurance" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

"premises" where it appears in Schedules 3 and 4 means a dwelling, including any garage, garden and out-buildings together with any agricultural land adjoining that dwelling and any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

(**9**) Section 37A was inserted by Article 24(1) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)) and was amended by Article 4 of the Social Security (Northern Ireland) Order 1979, Article 72(1) to (3) of, and Schedule 10 to, the Social Security (Northern Ireland) Order 1986 and by Article 10 of the Social Security (Northern Ireland) Order 1989 and is repealed with effect from 6th April 1992 by Article 4(3) of, and Schedule 4 to, the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**10**) S.I. 1983/883; Article 26A was inserted by S.I. 1983/1116 and amended by S.I. 1983/1521, S.I. 1986/592, S.I. 1990/1308 and S.I. 1991/766

(**11**) Article 25A was inserted by S.I. 1983/1164 and amended by S.I. 1983/1540, S.I. 1986/628 and S.I. 1991/708

"self-employed earner" means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner's employment (whether or not he is also employed in such employment);

"single claimant" means a claimant who neither has a partner nor is a lone parent;

"student" has the meaning prescribed in regulation 41;

"week" means a period of seven days beginning with midnight between Saturday and Sunday;

"week of claim" means the week which includes the date of claim;

"year of assessment" has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(**12**);

"young person" has the meaning prescribed in regulation 8.

PART II

DISABILITY TEST

Person at a disadvantage in getting a job

3.—(1) A person has a disability which puts him at a disadvantage in getting a job where—

(a) in respect of an initial claim one or more of the paragraphs in Schedule 1 apply to him;

(b) in respect of a repeat claim one or more of the paragraphs in Part I or II of Schedule 1 apply to him.

(2) In this regulation and in regulation 4, the expressions "initial claim" and "repeat claim" have the same meanings as in Article 28B(1) of the Order (supplementary provisions about disability working allowance).

Declaration by claimant

4. On an initial claim, a declaration by the claimant that he has a physical or mental disability which puts him at a disadvantage in getting a job is not conclusive that for the purposes of Article 21(6A)(b) of the Order (income-related benefits) he has a disability, where—

(a) the claim itself contains contrary indications; or

(b) the adjudication officer has before him other evidence which contradicts that declaration.

PART III

PRESENCE IN NORTHERN IRELAND AND REMUNERATIVE WORK

Circumstances in which a person is treated as being or as not being in Northern Ireland

5.—(1) A person shall be treated as being in Northern Ireland if, on the date of claim—

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

(b) his partner, if he has one, is ordinarily resident in the United Kingdom;

(c) his earnings derive at least in part from remunerative work in the United Kingdom or the Republic of Ireland; and

(**12**) 1988 c. 1

(d) his earnings do not wholly derive from remunerative work outside the United Kingdom or the Republic of Ireland nor do the earnings of his partner, if he has one.

(2) A person shall be treated as not being in Northern Ireland during any period for which he, or his partner, is entitled to be paid disability working allowance or family credit under the law of Great Britain.

Remunerative work

6.—(1) Subject to paragraph (3), for the purposes of Article 21(6A)(a) of the Order a person shall be treated as engaged and normally engaged in remunerative work where—

(a) the work he undertakes is for not less than 16 hours per week;

(b) the work is done for payment or in expectation of payment; and

(c) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of paragraph (1) shall not be treated as engaged and normally engaged in remunerative work.

(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged and normally engaged in remunerative work if he is engaged by a charitable or voluntary body or is a volunteer where the only payment received by him, or due to be paid to him, is a payment which is to be disregarded under regulation 27(2) and paragraph 2 of Schedule 3 (sums to be disregarded in the calculation of income other than earnings).

(4) In determining for the purposes of paragraph (1)(a) whether a person has undertaken work of not less than 16 hours per week—

(a) there shall be included in the calculation any time allowed—

(i) for meals or refreshment, or

(ii) for visits to a hospital, clinic or other establishment for the purpose only of treating or monitoring the person's disability,

but only where the person is, or expects to be, paid earnings in respect of that time; and

(b) where at the date of claim the claimant has within the previous 5 weeks—

(i) started a new job,

(ii) resumed work after a break of at least 13 weeks, or

(iii) changed his hours,

the hours worked shall be calculated by reference to the number of hours, or where these are expected to fluctuate, the average number of hours, which he is expected to work in a week; or

(c) where sub-paragraph (b) does not apply, and

(i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including where the cycle involves periods in which the person does not work, those periods, but disregarding any other absences), or

(ii) no recognised cycle of working has been established at that date, the hours worked shall be calculated by reference to the average number of hours worked over the 5 weeks immediately preceding the week in which the claim is made, or such other length of time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(5) Subject to paragraph (6), the requirements of this paragraph are that the person—