STATUTORY RULES OF NORTHERN IRELAND

1992 No. 38

SOCIAL SECURITY

The Social Security (Introduction of Disability Living Allowance) Regulations (Northern Ireland) 1992

Made - - - -	*29th January 1992*
Coming into operation	*3rd February 1992*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by section 37ZD of the Social Security (Northern Ireland) Act 1975(**1**), Article 52(1)(g) and (j) of the Social Security (Northern Ireland) Order 1986(**2**) and Articles 7 and 13 of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991(**3**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Part I

Introduction

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Introduction of Disability Living Allowance) Regulations (Northern Ireland) 1992 and shall come into operation on 3rd February 1992.

(2) In these regulations—

"the Act" means the Social Security (Northern Ireland) Act 1975(**4**);

"the Adjudication Regulations" means the Social Security (Adjudication) Regulations (Northern Ireland) 1987(**5**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**6**);

(**1**) 1975 c. 15; section 37ZD was inserted by Article 3(2) of the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S. I. 1991/1712 (N. I. 17))
(**2**) S. I. 1986/1888 (N. I. 18)
(**3**) S. I. 1991/1712 (N. I. 17)
(**4**) 1975 c. 15
(**5**) S. R. 1987 No. 82; the relevant amending regulations are S. R. 1988 No. 369, S. R. 1989 No. 397 and S. R. 1991 No. 107. See also S. R. 1977 No. 242
(**6**) S. R. 1987 No. 465; to which there are amendments not relevant to these regulations

"adjudicating authority" means, as the case may be, an adjudication officer appointed under section 97(1)(**7**), a social security appeal tribunal constituted under section 97(2) to (2E)(**7**), a disability appeal tribunal constituted under Schedule 10A(**8**) or the Chief or any other Social Security Commissioner appointed in accordance with section 97(3)(**9**) and includes a Tribunal of 2 or 3 such Commissioners constituted in accordance with section 116;

"the Board" means the Attendance Allowance Board for Northern Ireland;

"care component" means the care component of a disability living allowance;

"mobility component" means the mobility component of a disability living allowance;

"second tier adjudication" has the meaning given to it in regulation 15.

(3) Unless the context otherwise requires, any reference in these regulations to—

(a) a numbered section is a reference to the section of the Act bearing that number;

(b) a numbered regulation is a reference to the regulation bearing that number in these regulations, and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that regulation bearing that number.

(4) Any sum payable in accordance with these regulations is payable subject to the provisions of Chapters II and VI of Part II of the Act, and of any regulations made thereunder.

(5) The Interpretation Act 1978(**10**) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

Part II

Attendance Allowance

Termination or cancellation of awards of attendance allowance

2.—(1) Any award of attendance allowance made to a person to whom paragraph (2) applies for a period—

(a) part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992; or

(b) the whole of which falls after 5th April 1992, shall be cancelled.

(2) This paragraph applies to a person who has not attained the age of 65 on 6th April 1992.

Award of disability living allowance

3.—(1) Subject to paragraphs (3) to (10), a person whose award of attendance allowance is terminated in accordance with regulation 2 shall be treated as having been awarded the care component for a period commencing on 6th April 1992 and ending on the day on which the period of the award of attendance allowance would have ended but for regulation 2.

(**7**) Section 97(1) to (2E) was substituted by paragraph 1 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S. I. 1983/1524 (N. I. 17)); section 97(1) was amended by paragraph 3(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S. I. 1990/1511 (N. I. 15)); and section 97(2A) and (2B) was substituted by Article 10(a) of the Health and Social Security (Northern Ireland) Order 1984 (S. I. 1984/1158 (N. I. 8))

(**7**) Section 97(1) to (2E) was substituted by paragraph 1 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S. I. 1983/1524 (N. I. 17)); section 97(1) was amended by paragraph 3(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1990 (S. I. 1990/1511 (N. I. 15)); and section 97(2A) and (2B) was substituted by Article 10(a) of the Health and Social Security (Northern Ireland) Order 1984 (S. I. 1984/1158 (N. I. 8))

(**8**) Schedule 10A was inserted by paragraph 16 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991 (S. I. 1991/1712 (N. I. 17))

(**9**) Section 97(3) was amended by section 9(2) of the Social Security Act 1979 (c. 18)

(**10**) 1978 c. 30

(2) Subject to paragraphs (3) to (10) and regulation 4, a person whose award of attendance allowance is cancelled in accordance with regulation 2 shall be treated as having been awarded the care component for a period commencing on whichever of the following dates is the latest, namely—

(a) 6th April 1992;

(b) the date which precedes by 3 months the date on which the award of attendance allowance would have commenced but for regulation 2; or

(c) where on 6th April 1992 the person has an award of the care component by virtue of paragraph (1), the day following the day on which that award ends,

and ending on the date on which the award of attendance allowance would have ended but for regulation 2.

(3) Where the award of attendance allowance which has terminated or been cancelled in accordance with regulation 2 was made to a person in respect of a child who, on the date on which the award is terminated or cancelled, has not attained the age of 16 years, then that child, and not the person to whom the award was made, shall be treated for the purposes of paragraph (1) or (2) as having been awarded the care component.

(4) The weekly rate of disability living allowance payable by virtue of this regulation shall be—

(a) in the case of a person to whom attendance allowance was payable, immediately before the award was terminated in accordance with regulation 2, at the higher rate specified in paragraph 1 of Part III of Schedule 4 to the Act(**11**), the highest of the three weekly rates of the care component prescribed in accordance with section 37ZB(3);

(b) in the case of a person to whom attendance allowance was payable, immediately before the award of attendance allowance was terminated in accordance with regulation 2, at the lower rate specified in paragraph 1 of Part III of Schedule 4 to the Act, the middle of the three weekly rates of the care component prescribed in accordance with section 37ZB(3); or

(c) at the highest of the three weekly rates of the care component where the award which was cancelled in accordance with regulation 2 was to be payable at the higher rate of attendance allowance and at the middle of those rates where the award which was cancelled was to be payable at the lower rate.

(5) Where, immediately before 6th April 1992, a person had an award of attendance allowance but no benefit was payable under that award by virtue of regulations made under any provision mentioned in paragraph (6), benefit under the award of disability living allowance treated as made by virtue of this regulation shall likewise not be payable; but, subject to paragraphs (6) to (10), for any parts of the period during which those regulations do not apply in his case, disability living allowance shall be payable at—

(a) the highest of the three weekly rates prescribed under section 37ZB(3) if attendance allowance would, immediately before 6th April 1992, have been payable at the higher rate but for those regulations; or

(b) the middle of those weekly rates if attendance allowance would, immediately before 6th April 1992, have been payable at the lower rate but for those regulations.

(6) The provisions referred to in paragraph (5) are—

(a) section 35(6)(**12**) (persons for whom accommodation is provided under certain enactments);

(**11**) *See* Article 3(2) of S. R. 1991 No. 77

(**12**) Section 35(6) was amended by Schedule 4 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(b) section 82(5) (persons abroad or undergoing imprisonment or detention in legal custody); or

(c) section 85(1)(**13**) (overlapping benefits).

(7) For the purposes of determining the weekly rate of disability living allowance payable to a person who has not attained the age of 16 such as is referred to in paragraph (3), paragraphs (4) and (5) shall apply as if he were the person to whom the attendance allowance was payable immediately before the award was terminated, or would have been payable if the award had not been cancelled, in accordance with regulation 2.

(8) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only for as long as the person to whom the award is treated as made continues to satisfy the conditions as to residence and presence in Northern Ireland prescribed under section 37ZA(6) and—

(a) in the case of a person to whom the care component is payable at the highest of the three weekly rates, also continues to satisfy the conditions mentioned in section 37ZB(1)(b) and (c); or

(b) in the case of a person to whom the care component is payable at the middle of the three weekly rates, also continues to satisfy one or other of the conditions mentioned in section 37ZB(1)(b) or (c).

(9) Subject to paragraph (10), paragraph (8) shall apply to a person who—

(a) before 6th April 1992, was entitled to an attendance allowance by virtue of section 35(1)(b) as enacted(**14**); and

(b) is awarded disability living allowance in accordance with this regulation,

as if section 37ZB(1)(c)(ii) were modified to read—

"(ii) he requires continual supervision in order to avoid substantial danger to himself or others.".

(10) Paragraph (9) shall not apply where the award of disability living allowance is reviewed in accordance with the provisions in Part III of the Act.

Claims for, and applications for reviews of decisions relating to, attendance allowance

4.—(1) Subject to paragraph (4), the replacement of attendance allowance by disability living allowance shall be disregarded in a case to which paragraph (2) or (3) applies.

(2) This paragraph applies in a case where a person—

(a) is under the age of 65 on 6th April 1992;

(b) has an award of attendance allowance which expires after 5th April 1992; and

(c) makes a claim for attendance allowance for a period commencing immediately after that award expires.

(3) This paragraph applies in a case where—

(a) a person is under the age of 65 on 6th April 1992;

(b) that person has an award of attendance allowance or is the subject of a decision given on a claim or an application for a review either not to award benefit or that the conditions of entitlement to attendance allowance were not satisfied; and

(c) an application for a review is made either—

(**13**) Section 85(1) was amended by paragraph 29 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 (S. I. 1975/1504 (N. I. 16))

(**14**) Section 35(1)(b) was substituted by Article 3(1) of the Social Security (Northern Ireland) Order 1988 (S. I. 1988/594 (N. I. 2))

(i) to an adjudication officer in accordance with section 104(2)(**15**) for the decision to award or, as the case may be, not to award benefit to be reviewed, or

(ii) to the Board in accordance with regulation 38(2) of the Adjudication Regulations for a decision of theirs given in accordance with section 105(3)(**16**) or 106(1)(**17**) (matters for determination by the Board), to be reviewed.

(4) Any award of attendance allowance made in accordance with this regulation shall be subject to the provisions of regulations 2 and 3.

Claims for the care component treated as having been made

5.—(1) Paragraph (2) applies where—

(a) a person who—

(i) does not have an award of attendance allowance, or

(ii) does have an award of attendance allowance, but that award is due to expire before 6th April 1992,

makes a claim for attendance allowance, or an application in writing is made in accordance with section 104(2) for the decision to award or, as the case may be, not to award attendance allowance to him to be reviewed;

(b) the claim or application for a review is made after 2nd February 1992, or is made before 3rd February 1992 but has not been determined by that date; and

(c) at the time the claim or, as the case may be, the application for a review is determined, the person to whom the claim or application relates has not made a claim for disability living allowance.

(2) Where the adjudication officer who is determining the claim or application for a review such as is mentioned in paragraph (1) is satisfied that—

(a) the person does not satisfy the conditions of entitlement to attendance allowance; but

(b) solely on the evidence before him, and apart from the requirement that the person makes a claim for disability living allowance in the manner and within the time prescribed, the person would, as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or highest, rate of that component,

a claim for the care component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a person has before 3rd February 1992 applied to the Board for a decision given under section 105(3) or 106(1) to be reviewed, and the question arising thereon has not been determined by 3rd February 1992, then—

(a) if the Department is notified that the question is determined against that person; and

(b) at the time he is notified, that person has not made a claim for disability living allowance; but

(c) the Department is satisfied solely on the evidence before it, and apart from any requirement that he makes a claim for disability living allowance in the manner and within the time

(**15**) *See* Article 3(3) of the Social Security Adjudications (Northern Ireland) Order 1983
(**16**) Section 105(3) was amended by Article 3(3) of the Social Security (Northern Ireland) Order 1990 (S. I. 1990/1511 (N. I. 15))
(**17**) Section 106(1) was amended by paragraph 10 of Schedule 5 to the Social Security (Northern Ireland) Order 1986, paragraph 13 of Schedule 7 to the Social Security (Northern Ireland) Order 1989 (S. I. 1989/1342 (N. I. 13)) and Article 3(4) of the Social Security (Northern Ireland) Order 1990