STATUTORY RULES OF NORTHERN IRELAND

1992 No. 32

SOCIAL SECURITY

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

Made - - - -	*27th January 1992*
Coming into operation	*6th April 1992*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 37ZA(6), 37ZB(2), (3), (7) and (8), 37ZC(2), (5), (6), (9) and (10), 37ZD, 37ZE(2), 85(1) and 114(1) of, and Schedule 17 to, the Social Security (Northern Ireland) Act 1975(**1**), Article 10 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**2**) and Article 7(1) 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 (Disability Living Allowance) Regulations (Northern Ireland) 1992 and shall come into operation on 6th April 1992.

(2) In these regulations—

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

"the Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**4**);

(**1**) 1975 c. 15; sections 37ZA to 37ZE were 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)). 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)). Schedule 17 is cited because of the power conferred in the meaning of the expression "Child", as substituted by paragraph 37 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975

(**2**) S.I. 1977/610 (N.I. 11); Article 10 was amended by paragraph 28(c) of Schedule 3 to the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) and by paragraph 7 of Schedule 2 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

(**3**) S.I. 1991/1712 (N.I. 17)

(**4**) S.I. 1972/1265 (N.I. 14)

"the 1968 Act" means the Children and Young Persons Act (Northern Ireland) 1968(**5**);

"the 1977 Order" means the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977;

"the 1986 Order" means the Social Security (Northern Ireland) Order 1986(**6**);

"the 1991 Order" means the Health and Personal Social Services (Northern Ireland) Order 1991(**7**);

"adjudicating authority" means, as the case may be, the Chief Adjudication Officer appointed under section 97(1B)(**8**), any other adjudication officer appointed under section 97(1)(**8**), a social security appeal tribunal constituted under section 97(2) to (2E)(**8**) or a disability appeal tribunal constituted under Schedule 10A(**9**);

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

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

"terminally ill" has the same meaning as in section 35(2C)(**10**).

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

(4) The Interpretation Act 1978(**11**) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

PART II

GENERAL

Conditions as to residence and presence in Northern Ireland

2.—(1) Subject to paragraphs (2) to (5), the prescribed conditions for the purposes of section 37ZA(6) as to residence and presence in Northern Ireland in relation to any person on any day shall be that—

(a) on that day—

(**5**) 1968 c. 34
(**6**) S.I. 1986/1888 (N.I. 18)
(**7**) S.I. 1991/194 (N.I. 1)
(**8**) 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)); 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**) 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)); 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**) 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)); 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))
(**9**) Schedule 10A was inserted by paragraph 16 of Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991
(**10**) Section 35(2C) was inserted by Article 3(1) of the Social Security (Northern Ireland) Order 1990
(**11**) 1978 c. 30

(i) he is ordinarily resident in Northern Ireland,

(ii) he is present in Northern Ireland, and

(iii) he has been present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; and

(b) where that day falls within a period in which that person—

(i) receives tax free emoluments,

(ii) is the spouse of a person who receives tax free emoluments, or

(iii) is aged under 16 and is the son, daughter, step-son or step-daughter of a person who receives tax free emoluments,

that period is immediately preceded by a period of 4 years during which the person first mentioned in this sub-paragraph was present in Northern Ireland for a period of, or for periods amounting in the aggregate to, not less than 156 weeks;

and for the purpose of this provision "tax free emoluments" means emoluments which are exempt from tax under any of the provisions listed in regulation 11(1) of the Child Benefit (General) Regulations (Northern Ireland) 1979(**12**).

(2) For the purposes of paragraph (1)(a)(ii) and (iii), notwithstanding that on any day a person is absent from Northern Ireland, he shall be treated as though he were present in Northern Ireland if his absence is by reason only of the fact that on that day—

(a) he is abroad in his capacity as—

(i) a serving member of the forces within the meaning of the definition "serving member of the forces" in regulation 1(2) of the Social Security (Contributions) Regulations 1979(**13**), or

(ii) an airman or mariner within the meaning of regulation 80 and regulation 84 respectively of the Social Security (Contributions) Regulations (Northern Ireland) 1979(**14**);

(b) he is in employment prescribed for the purposes of section 132 of the Social Security Act 1975(**15**) in connection with continental shelf operations;

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

(d) his absence from Northern Ireland is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or

(e) his absence from Northern Ireland is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Northern Ireland, and the Department has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this sub-paragraph, he should be treated as though he were present in Northern Ireland.

(3) Where a person is terminally ill and—

(a) makes a claim for disability living allowance; or

(b) an application is made for a review of his award of disability living allowance,

(**12**) S.R. 1979 No. 5; to which there are amendments not relevant to these regulations
(**13**) S.I. 1979/591; to which there are amendments not relevant to these regulations
(**14**) S.R. 1979 No. 186; to which there are amendments not relevant to these regulations
(**15**) 1975 c. 14; section 132(2) was amended by paragraph 21 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23)

expressly on the ground that he is such a person, paragraph (1) shall apply to him as if sub-paragraph (a)(iii) were omitted.

(4) Paragraph (1) shall apply in the case of a child under the age of 6 months as if in sub-paragraph (a)(iii) for the reference to 26 weeks there were substituted a reference to 13 weeks.

(5) Where in any particular case a child has, by virtue of paragraph (4), entitlement to the care component immediately before the day on which he attains the age of 6 months, then until the child attains the age of 12 months, paragraph (1)(a)(iii) shall continue to apply in his case as if for the reference to 26 weeks there were substituted a reference to 13 weeks.

Persons aged 65 and over

3.—(1) A person shall not be precluded from entitlement to either component of disability living allowance by reason only of the fact that he has attained the age of 65, where—

(a) disability living allowance is claimed for a period beginning on or after the day on which the person attains the age of 65 but before he attains the age of 66;

(b) on the day before he attained the age of 65, he satisfied the conditions as to residence and presence in Northern Ireland set out in regulation 2;

(c) on that day, he satisfied the conditions of entitlement in section 37ZB(1) (care component) or, as the case may be, section 37ZC(1) (mobility component); and

(d) he has satisfied those conditions throughout the period beginning on that day and ending with the day on which the claim is made.

(2) Paragraph (3) applies to a person who—

(a) made a claim for disability living allowance before he attained the age of 65, which was not determined before he attained that age; and

(b) did not at the time he made the claim have an award of disability living allowance for a period ending on or after the day on which he attained the age of 65.

(3) In determining the claim of a person to whom this paragraph applies, where the person otherwise satisfies the conditions of entitlement to either or both components of disability living allowance for a period commencing before he attains the age of 65 (other than the requirements of section 37ZB(2)(a) or, as the case may be, section 37ZC(9)(a)(3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.

(4) Schedule 1, which makes further provision for persons aged 65 and over, shall have effect.

Rate of benefit

4.—(1) The three weekly rates of the care component are—

(a) the highest rate, payable in accordance with section 37ZB(4)(a), £43·35;

(b) the middle rate, payable in accordance with section 37ZB(4)(b), £28·95; and

(c) the lowest rate, payable in accordance with section 37ZB(4)(c), £11·55.

(2) The two weekly rates of the mobility component are—

(a) the higher rate, payable in accordance with section 37ZC(11)(a), £30·30; and

(b) the lower rate, payable in accordance with section 37ZC(11)(b), £11·55.

Late claim by a person previously entitled to benefit

5.—(1) Notwithstanding section 37ZE(1) (no entitlement to disability living allowance for any day before a claim is made), where—

(a) a person's entitlement to disability living allowance has ended; and

(b) that person makes or is treated as making a claim for disability living allowance after the entitlement has ended but within a period of 6 months immediately following the day on which it ended,

then that person shall, subject to satisfying any other conditions of entitlement, be entitled to the care component for any day on or after 6th April 1992 on which he satisfies the conditions specified in paragraph (2)(a) and to the mobility component for any day on or after that day on which he satisfies the conditions specified in paragraph (2)(b).

(2) For the purposes of paragraph (1), those conditions are—

(a) where the person is entitled on the claim for disability living allowance to the care component, that—

(i) the previous entitlement was to the care component,

(ii) that entitlement ended within 6 months of the claim being made,

(iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day on which the claim was made, he satisfied the conditions of entitlement to the care component specified in section 37ZB(1)(a), (b) or (c), and

(iv) the day in question falls within that period;

(b) where the person is entitled on the claim for disability living allowance to the mobility component, that—

(i) the previous entitlement was to the mobility component,

(ii) that entitlement ended within 6 months of the claim being made,

(iii) throughout the period beginning with the day following the day on which the previous entitlement ended and ending on the day on which the claim was made, he satisfied the conditions of entitlement to the mobility component specified in section 37ZC(1)(a), (b), (c) or (d), and

(iv) the day in question falls within that period.

(3) Where a person has been entitled for any period before 6th April 1992 to attendance allowance or mobility allowance, then—

(a) the reference in paragraph (1)(a) to entitlement to disability living allowance includes also a reference to entitlement to attendance allowance or mobility allowance; and

(b) the reference in paragraph (2)(a)(i) to entitlement to the care component includes also a reference to entitlement to attendance allowance and the reference in paragraph (2)(b)(i) to entitlement to the mobility component includes also a reference to entitlement to mobility allowance.

PART III

CARE COMPONENT

Qualifying period for the care component after an interval

6.—(1) The period prescribed for the purposes of section 37ZB(2)(a)(ii) is a period of 3 months ending on the day on which the person was last entitled to the care component or to attendance allowance where that day falls not more than 2 years before the date on which entitlement to the care component would begin, or would have begun but for any regulations made under Article 52(1)(l)