1987 No. 413

SOCIAL SECURITY

The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987

Made . . . . . *3rd November 1987*

Coming into operation . . *14th December 1987*

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 35 and 85(1) of the Social Security (Northern Ireland) Act 1975(**a**) and paragraphs 3 and 7 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(**b**) and of all other powers enabling it in that behalf, and for the purpose only of consolidating the regulations hereby revoked, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987 and shall come into operation on 14th December 1987.

(2) In these regulations, unless the context otherwise requires—

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

"the Board" means the Attendance Allowance Board;

"child" means a person who is under the age of 16;

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

"Scheduled enactment" means any enactment referred to in Schedule 1 to these regulations.

(**a**) 1975 c. 15; section 35 was amended by Article 3 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) and paragraph 8 of Part II of Schedule 1 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and 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))

(**b**) 1975 c. 18

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

(3) For the purposes of regulations 4 and 11(1)(*b*) references to the cost of the accommodation shall not include the cost of—

(*a*) domiciliary services provided in respect of a person or child 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 or child under disability;

(*c*) improvements made to, or furniture or equipment provided for, residential homes or other homes or premises 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 accommodation 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 the accommodation in respect of which grants or payments are made out of public or local funds; or

(*f*) such other services, amenities and requisites as the Department may direct.

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

(*a*) a person's father, mother, son, daughter, brother or sister shall include reference to his step-father, step-mother, step-son, step-daughter, half-brother and step-brother, or half-sister and step-sister, as the case may be, and a person shall be treated as such a relative if he is such a relative by adoption or would be such a relative if some person born illegitimate had been born legitimate;

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

(*c*) 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.

PART II

RESIDENCE AND PRESENCE IN NORTHERN IRELAND

Entitlement conditions relating to residence and presence in Northern Ireland

2.—(1) Subject to paragraphs (2) and (3), the prescribed conditions for the purposes of section 35(1) as to the residence and presence in Northern Ireland in relation to any person in respect of any day shall be—

(*a*) that he is ordinarily resident in Northern Ireland;

(*b*) that he is present in Northern Ireland;

(*c*) that he has been present in Northern Ireland for a period of, or periods amounting in the aggregate to, not less than 26 weeks in the 12 months immediately preceding that day; and

(*d*) in the case of a person who, in respect of a period which includes that day, receives earnings or other emoluments to which regulation 11 of the Child Benefit (General) Regulations (Northern Ireland) 1979(**a**) (persons exempt from tax) applies, or the spouse, or son or daughter under the age of 16, of such a person, that he was present in Northern Ireland for a period of, or periods amounting in the aggregate to, 156 weeks in the period of 4 years immediately preceding the period in respect of which he first receives or received such emoluments.

(2) For the purposes of paragraph (1)(*b*) and (*c*) 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 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 of "serving member of the forces" in regulation 1(2) of the Social Security (Contributions) Regulations 1979(**b**), 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(**c**);

(*b*) he is in prescribed employment in connection with continental shelf operations within the meaning of regulation 85 of the Social Security (Contributions) Regulations 1979(**d**);

(*c*) he is living with a person mentioned in sub-paragraph (*a*)(i) and is the spouse, son, daughter, father, father-in-law, mother or mother-in-law 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) Paragraph (1)(*d*) shall not apply to any person, or to his spouse, or son or daughter under the age of 16, in respect of a day if, in relation to the tax year immediately preceding the tax year in which that day falls, he proves that the amount of his emoluments to which paragraph (1)(*d*) refers was less than his total income as defined in section 528 of the Income and Corporation Taxes Act 1970(**e**).

(**a**) S.R. 1979 No. 5; the relevant amending regulations are S.R. 1984 No. 78
(**b**) S.I. 1979/591
(**c**) S.R. 1979 No. 186; to which there are amendments not relevant to these regulations
(**d**) S.I. 1979/591; the relevant amending instrument is S.I. 1982/1738
(**e**) 1970 c. 10

PART III

ADULTS IN HOSPITAL AND CERTAIN OTHER ACCOMMODATION

Adults in hospital

3. Subject to regulation 5, it shall be a condition for the receipt of attendance allowance for any period in respect of any person who has attained the age of 16 that during that period he is not maintained free of charge while undergoing medical or other treatment as an in-patient—

(*a*) in a hospital or similar institution maintained or administered under the Order, or by or on behalf of the Secretary of State, or by or on behalf of the Defence Council; or

(*b*) in pursuance of arrangements made, or having effect as if made, by a Health and Social Services Board established under Article 16 of the Order, the Secretary of State or the Defence Council, in a hospital or similar institution not so maintained or administered,

and, for this purpose, a person shall only be regarded as not being maintained free of charge in a hospital or similar institution for any period if he is paying or has paid, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation or services (other than services by way of treatment) provided for him in the hospital or similar institution for that period.

Adults in certain accommodation other than hospitals

4.—(1) Except in the cases specified in paragraphs (2) and (3) and subject to regulation 5, attendance allowance shall not be payable in respect of a person who has attained the age of 16 for any period during which that person is living in accommodation—

(*a*) provided for him in pursuance of Article 5, 7, 15 or 36 of the Order(**a**);

(*b*) provided for him in circumstances in which the cost of the accommodation is being borne wholly or partly out of public or local funds in pursuance of a Scheduled enactment; or

(*c*) provided for him in circumstances in which the cost of the accommodation may be borne wholly or partly out of public or local funds in pursuance of a Scheduled enactment.

(2) Paragraph (1) shall not apply in the case of a person under the age of 18, who is provided with accommodation in a private dwelling in pursuance of Article 36(1)(*b*) of the Order.

(3) Paragraph (1)(*c*) shall not apply in respect of the following accommodation—

(*a*) temporary accommodation provided for the homeless; or

(*b*) accommodation in such other case or class of case as the Department may direct.

(a) Article 36 was amended by Article 11(2) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))