1984 No. 317

SOCIAL SECURITY

The Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984

Made . . . . . 4th September 1984

Coming into operation —

regulations 1, 2, 10, 16, 17 and 18 ... 10th September 1984
remainder ..... 29th November 1984

The Department of Health and Social Services for Northern Ireland, in exercise of the powers set out in Schedule 1 below, and of all others enabling it in that behalf, hereby makes the following regulations which contain only provisions consequential on Article 5 of the Health and Social Security (Northern Ireland) Order 1984(**a**) and regulations made under section 36 of the Social Security (Northern Ireland) Act 1975(**b**) and which accordingly, by virtue of Article 16(1)(*b*) of that Order, are not subject to the requirement of section 10(1) of the Social Security Act 1980(**c**) for prior reference to the Social Security Advisory Committee:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984 and shall come into operation in the case of regulations 1, 2, 10, 16, 17 and 18 on 10th September 1984, and in the case of the remainder of the regulations on 29th November 1984.

Interpretation

2.—(1) In these regulations "the Act" means the Social Security (Northern Ireland) Act 1975, and "the Order" means the Health and Social Security (Northern Ireland) Order 1984.

(2) Any reference in these regulations to a person's father, mother, son, or daughter includes a reference to his step-father, step-mother, step-son or step-daughter, as the case may be, and a person shall be treated as such a relative if he would be such a relative if some person born illegitimate had been born legitimate.

(3) In determining whether a day falls within a period of interruption of employment, the provisions of section 17(1) of the Act (days for which unemployment, sickness and invalidity benefit are payable) and of any regulations made under section 17(1) and (2) shall have effect for the purposes of severe disablement allowance as they have effect for the purposes of invalidity benefit.

(4) References in regulations 5(*b*) and 6 to a person being entitled to a severe disablement allowance and in regulation 19 to a person being entitled to a non-contributory invalidity pension include a reference to a person who would be entitled to a payment of such an allowance or, as the case may be, such a pension but

(**a**) S.I. 1984/1158 (N.I. 8)
(**b**) 1975 c. 15; for section 36 as now substituted *see* Article 5(1) of the Health and Social Security (Northern Ireland) Order 1984
(**c**) 1980 c. 30

for any provision of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**a**).

PART II

MISCELLANEOUS PROVISIONS RELATING TO SEVERE DISABLEMENT ALLOWANCE

Conditions relating to residence and presence

3.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 36(4)(*c*) of the Act as to residence and presence in Northern Ireland in relation to any person in respect of any day shall be—

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

(*b*) that he has been present in Northern Ireland for 168 days or more in the 196 days immediately preceding that day; and

(*c*) that he has been resident in Northern Ireland for a period of or periods amounting in the aggregate to—

(i) 10 years in the 20 years immediately preceding that day; or

(ii) 10 years since his birth if he is under 20 years of age on that day.

(2) For the purposes of paragraph (1)(*a*) or (*b*) 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 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**); or

(*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**); or

(*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.

(3) Where a person has been entitled to a severe disablement allowance or a non-contributory invalidity pension for any day, the conditions set out in paragraph (1) shall not apply to that person in respect of any subsequent day of incapacity for work falling within the same period of interruption of employment.

Circumstances in which a person over pensionable age is to be treated as having been entitled to a severe disablement allowance immediately before attaining that age

4. A person who has attained pensionable age shall for the purposes of section 36(4)(*d*) of the Act be treated as having been entitled to a severe disablement allowance immediately before attaining that age if immediately before attaining it—

(*a*) he would have satisfied the conditions for entitlement to that allowance or to a non-contributory invalidity pension but for the provisions of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979, or

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(**a**) S.R. 1979 No. 242, as amended by S.R. 1980 No. 451, S.R. 1982 No. 272 and S.R. 1983 No. 36
(**b**) S.I. 1979/591
(**c**) S.R. 1979 No. 186; to which there are amendments not relevant to the subject matter of these regulations

(**d**) S.I. 1979/591; the relevant amending instrument is S.I. 1982/1738

(*b*) he was entitled to a non-contributory invalidity pension.

Severe disablement allowance for persons over retiring age

5. A person who—

(*a*) has attained retiring age; and

(*b*) was entitled to a severe disablement allowance immediately before he attained that age,

shall continue to be so entitled notwithstanding that he does not satisfy the conditions specified in subsection (2) or (3) of section 36 of the Act if he satisfies the other requirements for entitlement to such an allowance.

Modification of section 36(2) and (3) of the Act in relation to persons who have previously been entitled to a severe disablement allowance

6. A person who has previously been entitled to a severe disablement allowance for any day shall be entitled to such an allowance on the relevant day notwithstanding that he does not satisfy—

(*a*) in the case of a person who on the earlier day satisfied the conditions specified in section 36(2) of the Act, the conditions specified in subsection (2)(*b*) of that section; or

(*b*) in the case of a person who on the earlier day satisfied the conditions specified in section 36(3) of the Act, the conditions specified in subsection (3)(*b*) of that section,

if the relevant day and the earlier day fall within the same period of interruption of employment and if he satisfies the other requirements for entitlement to such an allowance.

Days for which persons are to be treated as incapable of work for the purposes of severe disablement allowance

7.—(1) Subject to paragraph (3), for the purposes of severe disablement allowance a person shall not be treated as incapable of work for any day unless that day would be a day of incapacity for work under section 17(1)(*a*) of the Act or regulation 3, 5 or 7(1)(*f*) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984(**a**) (provisions for determining whether a day is one of incapacity for work for the purposes of sickness or invalidity benefit); and in the case of a person who has not attained retiring age, Sunday or the day which would be substituted for Sunday under regulation 4 of the said regulations of 1984 shall (except for the purposes of the requirements of section 36(2) or (3) of the Act as to the period for which a person must have been incapable of work as those apply in the case of a person who has not previously been entitled to severe disablement allowance) not be treated as a day on which that person is incapable of work.

(2) In determining for the purposes of section 36(2) or (3) of the Act whether a person has been incapable of work for a period of not less than 196 consecutive days, a day shall not be treated as a day on which that person was incapable of work if on that day he was undergoing imprisonment or detention in legal custody.

(3) A person who was incapable of work—

(*a*) for not less than 196 consecutive days commencing on or before he attained the age of 20, and

(*b*) for not less than 196 consecutive days immediately preceding the relevant day,

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(**a**) S.R. 1984 No. 245

but who was capable of work for a period which does not, or for periods which in the aggregate do not, exceed 182 days where that period or those periods occurred—

(i) after the 196 days mentioned in sub-paragraph (*a*) but before the 196 days mentioned in sub-paragraph (*b*), and

(ii) after he attained the age of 15 years 24 weeks,

shall be treated for the purposes of section 36(2)(*b*) of the Act, and for that purpose only, as incapable of work on each day within that period or those periods.

Circumstances in which a person is to be treated as receiving full-time education

8.—(1) A person shall be treated as receiving full-time education for the purposes of severe disablement allowance for any period during which—

(*a*) he is not less than 16 or more than 19 years of age; and

(*b*) he attends for not less than 21 hours a week a course of education; so, however, that in calculating the number of hours a week during which he attends that course no account shall be taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability.

(2) In determining the duration of a period of full-time education under paragraph (1), any temporary interruption of that education may be disregarded.

(3) A person over the age of 19 shall be treated as not receiving full-time education.

Disqualification for severe disablement allowance

9. A person shall be disqualified from receiving a severe disablement allowance for such period not exceeding 6 weeks as may be determined in accordance with sections 97 to 104 of the Act if—

(*a*) he has become incapable of work through his own misconduct, except that this disqualification shall not apply where the incapacity is due to venereal disease; or

(*b*) he fails without good cause to comply with a notice in writing given by or on behalf of the Department requiring him to attend for and to submit himself to medical or other examination on a date not earlier than the third day after the day on which the notice was sent and at a time and place specified in that notice; or

(*c*) he fails without good cause to attend for, or submit himself to, medical or other treatment; so however that this disqualification shall not apply to any failure to attend for or to submit to vaccination or inoculation of any kind or to a surgical operation, unless the failure is a failure to attend for or to submit to a surgical operation of a minor character, and is unreasonable; or

(*d*) he fails without good cause to observe any of the following rules of behaviour, namely:—

(i) to refrain from behaviour calculated to retard his recovery, and to answer any reasonable enquiries (not being enquiries relating to medical examination, treatment or advice) by the Department or its officers directed to ascertaining whether he is doing so;

(ii) not to be absent from his place of residence without leaving word where he may be found;

(iii) to do no work for which remuneration is, or would ordinarily be, payable unless it is—

(*aa*) work which is undertaken under medical supervision as part of his treatment while he is a patient in or of a hospital or similar institution, or

(*bb*) work which is not so undertaken and which he has good cause for doing,

and from which, in the case of work of either description, his earnings, if any are ordinarily not more than £23·50 a week.

Adjudication

10.—(1) For the purposes of section 36(5) of the Act (extent of disablement), the evidence required that on any day a person suffers or suffered from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts or amounted to not less than 80 per cent. shall consist of—

(*a*) evidence that that day falls within the period specified in a certificate issued in respect of him by the Attendance Allowance Board under section 35(2) of the Act;

(*b*) evidence that on that day he is or was entitled to—

(i) a mobility allowance under section 37A of the Act(**a**); or

(ii) a mobility supplement under Article 26A of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983(**b**) or under Article 25A of the Personal Injuries (Civilians) Scheme 1983(**c**);

(*c*) evidence that the extent of his disablement on that day has been assessed for the purposes of section 57 of the Act as not less than 80 per cent.;

(*d*) evidence that that day is or was or is or was later than one in respect of which it has been determined under the Vaccine Damage Payments Act 1979(**d**) that he is or was severely disabled as a result of a vaccination against any of the diseases to which that Act applies;

(*e*) evidence that the degree of his disablement on that day has been assessed for the purposes of Part III of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 or of Part III of the Personal Injuries (Civilians) Scheme 1983 as not less than 80 per cent.;

(*f*) evidence that on that day he is or was registered as a blind or partially sighted person with a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(**e**) for that purpose;

(*g*) evidence that on that day the Department provides or provided him with an invalid carriage or other vehicle under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or makes or made payments by way of grant to him under Article 30(3) of that Order;

(*h*) evidence that the extent of his disablement on that day has been assessed for the purposes of section 36 of the Act as not less than 80 per cent.; or

(*i*) such other evidence as satisfies an adjudicating medical authority that he so suffers or suffered.

(2) For the purposes of sub-paragraphs (*a*) to (*h*) of paragraph (1) an official record of the Department of any fact specified in those sub-paragraphs shall be sufficient evidence of that fact.

(3) The disablement questions in relation to severe disablement allowance shall be referred to and determined by an adjudication officer in any case where the Department has an official record as specified in paragraph (2).

(**a**) Section 37A was inserted by Article 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))
(**b**) S.I. 1983/883; Article 26A was inserted by Article 4 of S.I. 1983/1116
(**c**) S.I. 1983/686; Article 25A was inserted by Article 3 of S.I. 1983/1164
(**d**) 1979 c. 17
(**e**) S.I. 1972/1265 (N.I. 14)