1976 No. 99

SOCIAL SECURITY

The Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976

Made . . . . . 16*th March* 1976

Coming into operation . . . 12*th April* 1976

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 11(3), 13(4), 37, 40(2), 49, 79(1), 80, 81(1), (2) and (6), 82(1), (5) and (6), 84(1) and (2), 85(1), 86(5) and 119(3) of the Social Security (Northern Ireland) Act 1975(a), section 35(7) of the National Insurance Act (Northern Ireland) 1966(b), as continued in force by regulation 2(2) of the Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 1975(c), 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 Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976 and shall come into operation on 12th April 1976.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires, "the Act" means the Social Security (Northern Ireland) Act 1975 and other expressions have the same meanings as in the Act.

(a) 1975 c. 15 (b) 1966 c. 6 (N.I.) (c) S.R. 1975 No. 96

(2) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which may re-enact or replace it, with or without modification.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(d) shall apply in relation to this statutory rule and in relation to the revocation effected by it as if this statutory rule and the regulations revoked by it were Acts of Parliament and as if the revocation were a repeal.

PART II

MISCELLANEOUS PROVISIONS RELATING TO INVALID CARE ALLOWANCE

Prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons

3.—(1) For the purposes of section 37 of the Act (invalid care allowance) the prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons are—

(*a*) a payment under section 61 of the Act (increase of disablement pension where constant attendance needed);

(*b*) a payment such as is referred to in section 7(3)(*b*) of the Industrial Injuries and Diseases (Old Cases) Act 1975(e) (increase of an allowance under that Act where the person in respect of whom that allowance is payable requires constant attendance as a result of his disablement);

(*c*) a payment under regulation 44 of the Social Security (Industrial Injuries) (Benefit) Regulations (Northern Ireland) 1976(f) in respect of the need of constant attendance;

(*d*) a payment by way of an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension,

being a payment the weekly rate of which is not less than the amount specified in paragraph 7(*a*) of Part V of Schedule 4 to the Act.

(2) For the purposes of paragraph (1)(*d*) of this regulation "war disablement pension" means—

(*a*) retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Ministry of Pensions Act 1916(g), the Air Force (Constitution) Act 1917(h), the Personal Injuries (Emergency Provisions) Act 1939(i), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(j), the Polish Resettlement Act 1947(k), the Home Guard Act 1951(l) or the Ulster Defence Regiment Act 1969(m);

(*b*) any retired pay or pension to which section 365(1) of the Income and Corporation Taxes Act 1970(n) applies, not being retired pay, pension or allowance to which sub-paragraph (*a*) of this paragraph applies;

or

(d) 1889 c. 63
(e) 1975 c. 16
(f) S.R. 1976 No. 42
(g) 1916 c. 65
(h) 1917 c. 51
(i) 1939 c. 82
(j) 1939 c. 83
(k) 1947 c. 19
(l) 1951 c. 8
(m) 1969 c. 65
(n) 1970 c. 10

(*c*) any payment which the Department has certified can be accepted as being analogous to any such retired pay, pension or allowance as is referred to in sub-paragraph (*a*) or (*b*) of this paragraph.

Circumstances in which persons are or are not to be treated as engaged or regularly and substantially engaged in caring for severely disabled persons

4.—(1) A person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person on any day in a week unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours a week in caring for that severely disabled person.

(2) A week in respect of which a person fails to satisfy the requirements of paragraph (1) of this regulation shall be treated as a week in respect of which that person satisfies those requirements if he establishes—

(*a*) that he has only temporarily ceased to satisfy them; and

(*b*) that (disregarding the provisions of this sub-paragraph) he has satisfied them for at least 14 weeks in the period of 26 weeks ending with that week and would have satisfied them for at least 22 weeks in that period but for the fact that either he or the severely disabled person for whom he has been caring was undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Circumstances in which persons are to be regarded as receiving full-time education

5.—(1) For the purposes of an invalid care allowance, a person shall not be treated as receiving full-time education for any period unless that period is one in respect of which the Department certifies that he is receiving full-time education by attendance at an establishment recognised by the Department as being, or as comparable to, a university, college or school.

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

Prescribed relationships between severely disabled persons and persons engaged in caring for them

6.—(1) For the purposes of section 37(1)(*c*) of the Act (condition of entitlement to an invalid care allowance that the severely disabled person is either such relative of the person caring for him as may be prescribed or a person of any such other description as may be prescribed) the relationship which the severely disabled person is required to bear to the person caring for him is that of—

(*a*) lineal descendant or ascendant in a direct line;

(*b*) husband, wife, step-father, step-mother, step-son, step-daughter, brother, sister, half-brother, half-sister, step-brother, step-sister, aunt, uncle, nephew, niece; or

(*c*) father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.

(2) Reference to any such relationship as is specified in paragraph (1) of this regulation shall be taken to include any such relationship by reason of adoption and also any such relationship as would have subsisted if some person born illegitimate had been born legitimate.

Manner of electing the person entitled to an invalid care allowance in respect of a severely disabled person where, but for section 37(7) of the Act, more than one person would be entitled to an invalid care allowance in respect of that severely disabled person

7.—(1) For the purposes of the provision in section 37(7) of the Act which provides that where, apart from that section, two or more persons would be entitled for the same day to an invalid care allowance in respect of the same severely disabled person one of them only shall be entitled, being such one of them as they may jointly elect in the prescribed manner, an election shall be made by giving the Department a notice in writing signed by the persons who but for the said provision would be entitled to an invalid care allowance in respect of the same severely disabled person specifying one of them as the person to be entitled.

(2) An election under paragraph (1) of this regulation shall not be effective to confer entitlement to invalid care allowance either for the day on which the election is made or for any earlier day if such day is one for which an invalid care allowance has been paid in respect of the severely disabled person in question and has not been repaid or recovered.

Circumstances in which a person is or is not to be treated as gainfully employed

8.—(1) For the purposes of section 37(1)(*b*) of the Act (condition of a person being entitled to an invalid care allowance for any day that he is not gainfully employed) a person shall not be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded £6 and, subject to paragraph (2) of this regulation, shall be treated as gainfully employed on every day in a week if his earnings in the immediately preceding week have exceeded £6.

(2) There shall be disregarded for the purposes of paragraph (1) above a person's earnings—

(*a*) for any week which under paragraph (2) of regulation 4 of these regulations is treated as a week in which that person satisfies the requirements of paragraph (1) of that regulation;

(*b*) for any week as an employed earner if that week is one throughout which he is absent from the employment by virtue of which he is an employed earner with the authority of his employer; and

(*c*) in the week immediately preceding the week in respect of which that person (if his earnings in the said immediately preceding week were disregarded) would first become entitled to an invalid care allowance in respect of a severely disabled person.

(3) The Social Security Benefit (Computation of Earnings) (Northern Ireland) Regulations 1975(**o**), except regulations 5 to 7 thereof, shall apply in relation to invalid care allowance as they apply in relation to invalidity pension.

Conditions relating to residence and presence in Northern Ireland

9.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 37(4) of the Act (person not to be entitled to an invalid care allowance unless he satisfies prescribed conditions as to residence or 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; and

(**o**) S.R. 1975 No. 15