1975 No. 102

SOCIAL SECURITY

The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1975

Made . . . . . *4th April* 1975

Coming into operation . . . . *6th April* 1975

The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred on it by sections 35, 82(6)(*b*), 85(1)(*b*), 105 and 106 of the Social Security (Northern Ireland) Act 1975(**a**), 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, 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) 1975 and shall come into operation on 6th April 1975.

(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;

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

"a local office" means an office appointed by the Department as a local office for the purposes of the Act or of these regulations;

and other expressions have the same meanings as in the Act.

(3) Reference in these regulations—

(*a*) to 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*) 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 it re-enacts or replaces, or which may re-enact or replace it, with or without modification;

(*c*) to a numbered regulation is, unless the context otherwise requires, a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(a) 1975 c. 15 (b) 1975 c. 18

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(c) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

PART II

RESIDENCE AND PRESENCE IN NORTHERN IRELAND

Entitlement conditions relating to residence and presence in Northern Ireland

2.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 35(1) of the Act 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; and

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

(*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 is a British subject whose place of birth is not in the United Kingdom or a British protected person within the meaning of the British Nationality Act 1948(d), that he has been present in Northern Ireland for a period of, or periods amounting in the aggregate to, not less than 52 weeks in the period of 2 years immediately preceding that day; and

(*e*) in the case of a person who is neither a British subject nor a British protected person within the meaning of the British Nationality Act 1948, that he has been present in Northern Ireland for a period of, or periods amounting in the aggregate to, not less than 156 weeks in the period of 4 years immediately preceding that day; and

(*f*) in the case of a person who, in respect of a period which includes that day, receives emoluments to which regulation 10A of the Family Allowances (Qualifications) Regulations (Northern Ireland) 1970(e), as amended(f), (certain persons exempt from United Kingdom income 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*) a person who is absent from Northern Ireland on any day shall be treated as being present in Northern Ireland—

(*a*) if on that day he is—

(i) a merchant seaman within the meaning of the Family Allowances (Qualifications) Regulations (Northern Ireland) 1970, as amended(g); or

(ii) a member of the forces within the meaning of those regulations; or

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(c) 1889 c. 63
(d) 1948 c. 56
(e) S.R. & O. (N.I.) 1970 No. 23 (p. 167)
(f) S.R. & O. (N.I.) 1970 No. 67 (p. 301)
(g) There is no amendment relevant to the subject matter of this paragraph.

(iii) living with such a member of the forces and is that member's spouse, son, daughter, father, father-in-law, mother or mother-in-law; or

(*b*) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 6 months; or

(*c*) where his absence is temporary and for the specific purpose of his being treated for incapacity or a disabling condition which commenced before he left Northern Ireland, during such period as the Department may allow having regard to the circumstances of the case.

(3) For the purposes of paragraph (1)(*d*) and (*e*)—

(*a*) a person who is absent from Northern Ireland on any day shall be treated as being present in Northern Ireland if on that day he is a person mentioned in paragraph (2)(*a*);

(*b*) a child who does not satisfy the condition which applies to him shall be treated as having satisfied it if the person who may become entitled to the allowance, in accordance with regulation 6(4), satisfies either of the conditions or is a British subject whose place of birth is in the United Kingdom.

(4) Paragraph (1)(*f*) 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)(*f*) refers was less than his total income as defined in section 528 of the Income and Corporation Taxes Act 1970(**h**).

(5) Where attendance allowance has been payable in respect of any person for any day, the conditions set out in paragraph (1)(*d*) and (*e*) shall not apply to that person in respect of any subsequent day.

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 Health and Personal Social Services (Northern Ireland) Order 1972(**i**), 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 Health and Personal Social Services (Northern Ireland) Order 1972, the Secretary of State or the Defence Council, in a hospital or similar institution not so maintained or administered;

(**h**) 1970 c. 10
(**i**) S.I. 1972/1265 (N.I. 14)

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. 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 he is a person living in accommodation provided for him in pursuance of, or provided for him in circumstances in which the cost of the accommodation is or may be borne wholly or partly out of public or local funds in pursuance of, any of the enactments mentioned in the Schedule to these regulations.

Exception from regulations 3 *and* 4

5.—(1) Where a person was entitled to attendance allowance in respect of the period immediately before he commenced to undergo any treatment or entered any accommodation mentioned in regulation 3 or 4, as the case may be, those regulations shall not apply in respect of the first 4 weeks of any period during which he is undergoing such treatment or is in such accommodation.

(2) For the purposes of paragraph (1)—

(*a*) 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period;

(*b*) any period or periods to which regulation 3 or 4 refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

CHILDREN

Modification of section 35(1) *to* (4) *of the Act in its application to children*

6.—(1) Subsections (1) to (4) of section 35 of the Act shall have effect in relation to a child subject to the modifications contained in the following provisions of this regulation.

(2) Subsection (1) shall have effect as if—

(*a*) for the words "if he satisfies" were substituted the words "in respect of a child who has attained the age of 2 and who satisfies or is treated as having satisfied";

(*b*) for the words "he is" in both places where they appear were substituted the words "the child is";

(*c*) after the word "functions" in both places where that word appears, there were inserted the words "(being attention substantially in excess of that normally required by a child of the same age and sex)";

(*d*) after the word "others" in both places where that word appears, there were inserted the words "(being supervision substantially in excess of that normally required by a child of the same age and sex)".

(3) Subsections (2) and (3) shall have effect as if references to a certificate were construed as references to a certificate issued in respect of the child.

(4) The person who in any given case shall be entitled to an attendance allowance in respect of a child shall be—

(*a*) in the case of a child living with his mother, his mother;

(*b*) in the case of a child to whom sub-paragraph (*a*) does not apply, if the child is living with his father, his father;

(*c*) in any other case—

(i) a person with whom the child is living; or

(ii) a person, being the child's mother, father, grandparent, brother or sister, who is contributing to the cost of providing for him.

(5) Paragraph (4) shall have effect subject to the following provisions:

(*a*) Only one person shall be entitled to an attendance allowance in respect of a child for any period, and if more than one person would otherwise be entitled to the allowance for that period, the person entitled to it shall be such one of them as the Department may in its discretion decide; and

(*b*) where a sum has been paid to any person on account of attendance allowance in respect of a child for any period and has not been repaid or recovered, no attendance allowance shall be payable in respect of that child for that period to any other person notwithstanding that the other person otherwise establishes title to it; and

(*c*) attendance allowance to which a woman is entitled by virtue of the said paragraph (4) and who is living with her husband may be paid to her or to her husband; and

(*d*) any period of—

(i) absence of a child from any person shall be disregarded for the first 4 weeks of that period and, in a case where that person is one of spouses living together and the other spouse would have become entitled to the allowance had he claimed it, for such further weeks, if any, as the Department may in its discretion decide;

(ii) interruption in the contributions of a person shall be disregarded for the first 4 weeks of that period;

so however that this sub-paragraph shall not apply where some other person would but for this sub-paragraph be awarded the allowance; and

(*e*) where a child would be regarded as living with a person although absent from that person, they shall be deemed to have ceased to live together after the expiration of any period of absence disregarded in pursuance of the preceding sub-paragraph; and

(*f*) a person shall be treated as contributing to the cost of providing for a child if that person is one of spouses living together and the other of them is so contributing.

(6) In a case to which the provisions of paragraph (5)(*c*) have applied immediately before the woman dies or ceases to live with her husband and he continues to obtain payment of the attendance allowance, then for any period of payment for which under paragraph (4) he would have been entitled to the attendance allowance had he claimed it he shall be deemed, if he subsequently claims it, to have been so entitled.