1971. No. 139 [C]

NATIONAL INSURANCE

Attendance Allowance

REGULATIONS, DATED 14TH MAY 1971, MADE BY THE NATIONAL INSURANCE JOINT AUTHORITY AND THE MINISTRY OF HEALTH AND SOCIAL SERVICES, IN CONJUNCTION WITH THE MINISTRY OF FINANCE, UNDER THE NATIONAL INSURANCE ACTS (NORTHERN IRELAND) 1966 TO 1970.

The National Insurance Joint Authority, in exercise of powers conferred by section 49 of the National Insurance Act (Northern Ireland) 1966(**a**) and the Ministry of Health and Social Services, in exercise of powers conferred by sections 47, 48(1), 51, 72, 74 and 80(3) and (4) of that Act and sections 4 and 6 of the National Insurance (Old Persons' and Widows' Pensions and Attendance Allowance) Act (Northern Ireland) 1970(**b**), in each case in conjunction with the Ministry of Finance so far as relates to matters with regard to which the Ministry of Finance has so directed, and in exercise of all other powers enabling them in that behalf, hereby make the following regulations being regulations subject to negative resolution in accordance with section 101(3) of the said Act of 1966:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Attendance Allowance) Regulations (Northern Ireland) 1971 and shall come into operation on 17th May 1971.

(2) In these regulations—

"the Act of 1970" means the National Insurance (Old Persons' and Widows' Pensions and Attendance Allowance) Act (Northern Ireland) 1970;

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

"the Industrial Injuries Act" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**c**);

"the principal Act" means the National Insurance Act (Northern Ireland) 1966.

(3) References in these regulations to a person's father, mother, son, daughter, brother or sister shall include references 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.

(**a**) 1966. c. 6 (N.I.).
(**b**) 1970. c. 28 (N.I.).
(**c**) 1966. c. 9 (N.I.).

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 4(2) of the Act of 1970 (entitlement to attendance allowance) 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**) (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 paragraphs (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; or

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

(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 Ministry may allow having regard to the circumstances of the case.

(d) 11 & 12 Geo. 6. c. 56.
(e) S.R. & O. (N.I.) 1970, No. 23, as amended by S.R. & O. (N.I.) 1970, No. 67.

(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 would otherwise be entitled to the allowance either satisfies the condition which would be applicable to that person 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 income tax year immediately preceding the income 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(f).

(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.

Exception from disqualification for receipt of benefit

3. Without prejudice to the provisions of the Act of 1970 and of regulation 2 relating to conditions as to presence in Northern Ireland, attendance allowance shall be a benefit which is excepted from the operation of section 48(1) of the principal Act (disqualification for receipt of benefit) in so far as it relates to a person who is absent from Northern Ireland.

PART III

ADULTS IN HOSPITAL AND CERTAIN OTHER ACCOMMODATION

Adults in hospital

4. Subject to regulation 6, 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 by the Northern Ireland Hospitals Authority under the Health Services Acts (Northern Ireland) 1953-1971(g), or by or on behalf of the Secretary of State for Social Services, or the Secretary of State for Defence; or

(*b*) in pursuance of arrangements made, or having effect as if made, by the said Northern Ireland Hospitals Authority, the Secretary of State for Social Services or the Secretary of State for Defence, 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.

(f) 1970. c. 10. (g) 1971. c. 1 (N.I.).

Adults in certain accommodation other than hospitals

5. Subject to regulation 6, attendance allowance shall not be payable in respect of any person who has attained the age of 16 for any period during which he is a person for whom accommodation is provided in pursuance of the Welfare Services Act (Northern Ireland) 1971(h).

Exception from regulations 4 and 5

6.—(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 4 or 5, 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) of this regulation—

(*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 4 or 5 refers shall be taken into account and aggregated with any period to which the other of them refers.

PART IV

CHILDREN

Modification of section 4(2) of the Act of 1970 in its application to children

7.—(1) Section 4(2) of the Act of 1970 (entitlement to attendance allowance) shall have effect in relation to a child subject to the modifications contained in the following provisions of this regulation.

(2) No person shall be entitled to an attendance allowance in respect of a child under the age of 2.

(3) In respect of a child who has attained the age of 2 the person entitled to an attendance allowance 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.

(4) Section 4(2)(*a*) and (*b*) shall have effect as if at the end of each paragraph there were included the words "and requires attention and supervision substantially in excess of that normally required by a child of the same age and sex".

(5) Paragraph (3) of this regulation 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 Ministry may in its discretion decide; and

(h) 1971. c. 2 (N.I.).

(*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 that other person otherwise establishes title to it; and

(*c*) attendance allowance payable to a woman who is entitled to it by virtue of the said paragraph (3) and who is living with her husband shall be receivable by her or by 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 Ministry 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 paragraph shall not apply where some other person would but for this paragraph be entitled to 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 sub-paragraph (*d*); 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) For the purposes of paragraph (5)(*c*), (*d*) and (*f*) a woman shall not be deemed to be living otherwise than with her husband unless they are permanently living in separation either by agreement or under an order of a court, or one of them has deserted the other and the separation which is incident to the desertion has not come to an end.

Modification of section 4(4) *of the Act of* 1970 *in its application to children*

8.—(1) Section 4(4) of the Act of 1970 (attendance allowance not payable in certain circumstances) shall have effect in relation to a child as if it provided additionally that, subject to the following provisions of this regulation, an attendance allowance shall not be payable for any period during which—

(*a*) the child is not accommodated in a private household unless the person to whom the allowance would otherwise be payable is contributing to the cost of providing for the child at a weekly rate not less than the aggregate amount of—

(i) the attendance allowance; and

(ii) where an allowance under the Family Allowances Act (Northern Ireland) 1966(i) is payable to that person, any contribution necessary in order that the child may be treated, for the purposes of that Act, as being included in the same family as that person; and

(iii) where in respect of the child any benefit or increase of benefit is payable under the principal Act or the Industrial Injuries Act to that person or his spouse, any contribution required in respect of the child for the purposes of section 41(1)(*b*) of the principal Act or, as the case may be, section 17(4)(*b*) or 21(4) of the Industrial Injuries Act;

(i) 1966. c. 8 (N.I.).