

2007 No. 431

SOCIAL SECURITY

**The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations
(Northern Ireland) 2007**

Made - - - - *8th October 2007*

Coming into operation - *29th October 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 67(2), 72(8) and 171 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and now vested in it(b).

This Rule contains only regulations made consequential upon section 54 of the Welfare Reform Act (Northern Ireland) 2007(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 29th October 2007.

(2) In these Regulations—

“the Attendance Allowance Regulations” means the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(d);

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(e).

Amendment of the Attendance Allowance Regulations

2.—(1) The Attendance Allowance Regulations are amended in accordance with paragraphs (2) and (3).

(a) 1992 c. 7; sections 67 and 72 are amended by section 54 of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), section 72 was amended by Article 64(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 171 was amended by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)), paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 28 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(b) See Article 8(b) of S.R. 1999 No. 481

(c) 2007 c. 2 (N.I.)

(d) S.R. 1992 No. 20; relevant amending Regulations are S.R. 1993 Nos. 149 and 165, S.R. 2000 No. 195, S.R. 2002 Nos. 31 and 132, S.R. 2003 No. 397 and S.R. 2005 No. 458

(e) S.R. 1992 No. 32; relevant amending Regulations are S.R. 1992 Nos. 144 and 481, S.R. 1993 Nos. 149 and 165, S.R. 1994 Nos. 65 and 263, S.R. 2000 No. 195, S.R. 2002 Nos. 31 and 132, S.R. 2003 No. 397 and S.R. 2005 No. 458

(2) For regulation 7(a) (persons in certain accommodation other than hospitals) substitute—

“Persons in care homes

7.—(1) Subject to regulation 8, a person shall not be paid any amount in respect of an attendance allowance for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—

- (a) Article 5, 15 or 36 of the Order(b);
- (b) the Mental Health (Northern Ireland) Order 1986(c); or
- (c) any other enactment relating to persons under disability.

(3) In this regulation and in regulation 8 references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person 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 under disability;
- (c) improvements made to, or furniture or equipment provided for, a care home 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 care home 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 any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
- (f) health services provided pursuant to the Order.

(4) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (5) and (6), be deemed—

- (a) to begin on the day after the day on which he enters a care home; and
- (b) to end on the day before the day on which he leaves a care home.

(5) Where a person enters a care home from a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.

(6) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home.”.

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- (a) Regulation 7 was amended by regulation 5(3) of S.R. 1993 No. 149, regulation 2(2)(a) of S.R. 1993 No. 165, regulation 2 of S.R. 2002 No. 31, regulation 4(2) of S.R. 2002 No. 132, regulation 2(2) of S.R. 2003 No. 397 and regulation 7 of S.R. 2005 No. 458
 - (b) Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)), Schedule 5 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)), Article 15 was amended by Part II of Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)), paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)), section 121(2) of the Immigration and Asylum Act 1999 (c. 33) and the Schedule to the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (c. 5 (N.I.)) and Article 36 was amended by section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N.I.)) and Article 45 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9))
 - (c) S.I. 1986/595 (N.I. 4)

- (3) In regulation 8 (exemption from regulations 6 and 7) for paragraph (6)(a) substitute—
- “(6) Regulation 7 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with assistance from another person or a charity; or
 - (b) on his behalf by another person or a charity.”.

Amendment of the Disability Living Allowance Regulations

3.—(1) The Disability Living Allowance Regulations are amended in accordance with paragraphs (2) and (3).

- (2) For regulation 9(b) (persons in certain accommodation other than hospitals) substitute—

“Persons in care homes

9.—(1) Except in the cases specified in paragraphs (3) to (5), and subject to regulation 10, a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

- (2) The specified enactments for the purposes of paragraph (1) are—

- (a) Article 5, 15 or 36 of the Order;
- (b) the Mental Health (Northern Ireland) Order 1986; or
- (c) any other enactment relating to persons under disability or to young persons or to education or training.

(3) Paragraph (2)(c) shall not apply in circumstances where any of the costs of the qualifying services provided for him are borne wholly or partly out of public or local funds by virtue of—

- (a) Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986(c);
- (b) Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990(d);
- (c) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(e); or
- (d) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(f).

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- (a) Paragraph (6) was added by regulation 5(4)(b) of S.R. 1993 No. 149 and amended by regulation 2(5)(a) of S.R. 2000 No. 195 and regulation 2(3) of S.R. 2003 No. 397
 - (b) Regulation 9 was amended by regulation 2(3) of S.R. 1992 No. 144, regulation 3(3)(b) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1993 No. 149, regulation 3(2) of S.R. 1993 No. 165, paragraph 1(b) of Schedule 17 to S.R. 1994 No. 65, regulation 3(2) of S.R. 1994 No. 263, regulation 3 of S.R. 2002 No. 31, regulation 5(2) of S.R. 2002 No. 132, regulation 3(2) of S.R. 2003 No. 397 and regulation 8 of S.R. 2005 No. 458
 - (c) S.I. 1986/594 (N.I. 3); Article 50 was amended by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) and Article 51 was substituted by Part II of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1))
 - (d) S.I. 1990/1506 (N.I. 11) which was repealed by the Schedule to the Education (Student Support) (Northern Ireland) Order 1998 subject to transitional and savings provisions in Articles 3 to 6 of the Education (Student Support) (Northern Ireland) Order 1998 (Commencement and Transitional Provisions) Order (Northern Ireland) 1998 (S.R. 1998 No. 306 (C. 14))
 - (e) S.I. 1993/2810 (N.I. 12); Article 30 was amended by Schedule 4 to the Further Education (Northern Ireland) Order 1997 (S.I. 1997/1772 (N.I. 15)) and Article 11(2) of the Colleges of Education (Northern Ireland) Order 2005 (S.I. 2005/1963 (N.I. 13))
 - (f) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(4) of the Finance Act 2003 (c. 14) and Articles 11 and 12 of the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))

(4) Subject to paragraph (5), paragraphs (1) and (2) shall not apply in the case of a child who—

- (a) has not attained the age of 16 and is in the care of a Health and Social Services Board or an HSS trust; or
- (b) has not attained the age of 18 and to whom—
 - (i) Article 17(b) of the Children (Northern Ireland) Order 1995^(a) (impairment of health and development) applies because his health is likely to be significantly impaired, or further impaired, without the provision of services for him, or
 - (ii) Article 17(c) of that Order (disability) applies; or
- (c) who is accommodated outside the United Kingdom and the costs of any qualifying services are borne wholly or partly by an education and library board pursuant to its powers under Article 11 of the Education (Northern Ireland) Order 1996^(b).

(5) Sub-paragraphs (a) and (b) of paragraph (4) shall only apply during any period which the Health and Social Services Board or HSS trust, in whose care the child is, place him in a private dwelling with a family, or a relative of his, or some other suitable person.

(6) In this regulation, and in regulation 10, references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person in a private dwelling; or
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
- (c) improvements made to, or furniture or equipment provided for, a care home 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; or
- (d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds; or
- (e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
- (f) health services provided pursuant to the Order.

(7) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (8) and (9), be deemed—

- (a) to begin on the day after the day on which he enters a care home; and
- (b) to end on the day before the day on which he leaves a care home.

(8) Where a person enters a care home from a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.

(9) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which regulation 6(1) applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home.”.

(a) S.I. 1995/755 (N.I. 2)
(b) S.I. 1996/274 (N.I. 1)

- (3) In regulation 10 (exemption from regulations 8 and 9) for paragraph (8)(a) substitute—
- “(8) Regulation 9 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with the assistance from another person or a charity; or
 - (b) on his behalf by another person or a charity.”.

Transitional and saving provisions

4.—(1) The substitution by these Regulations of regulation 7 of the Attendance Allowance Regulations shall not prevent any day before the coming into operation of these Regulations from being included in the first 28 day period to which regulation 8(1) of the Attendance Allowance Regulations refers.

(2) The substitution by these Regulations of regulation 9 of the Disability Living Allowance Regulations shall not prevent any day before the coming into operation of these Regulations from being included in—

- (a) the first 28 day period to which regulation 10(1) of the Disability Living Allowance Regulations refers; or
- (b) the first 84 days to which regulation 10(2) of the Disability Living Allowance Regulations refers where that person has not attained the age of 16.

Revocations

5. The Regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3).

Sealed with the Official Seal of the Department for Social Development on 5th October 2007

(L.S.)

David G. Wall
A senior officer of the Department for Social Development

(a) Paragraph (8) was added by regulation 4(3)(b) of S.R. 1993 No. 149 and amended by regulation 3(4)(a) of S.R. 2000 No. 195 and regulation 3(3) of S.R. 2003 No. 397

SCHEDULE

Regulation 5

Revocations

<i>Column(1)</i> <i>Citation</i>	<i>Column(2)</i> <i>Reference</i>	<i>Column(3)</i> <i>Extent of revocation</i>
The Social Security (Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 1992	S.R. 1992 No. 144	Regulation 2
The Social Security (Disability Living Allowance and Attendance Allowance) (Amendment) Regulations (Northern Ireland) 1992	S.R. 1992 No. 481	Regulations 2(3) and 3(3)
The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993	S.R. 1993 No. 149	Regulations 4(2) and 5(3)
The Social Security Benefits (Miscellaneous Amendments) Regulations (Northern Ireland) 1993	S.R. 1993 No. 165	Regulations 2(2) and 3(2)
The Health and Social Services Trusts (Consequential Amendments) Regulations (Northern Ireland) 1994	S.R. 1994 No. 65	In Schedule 17, paragraph 1(b)
The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 1994	S.R. 1994 No. 263	Regulations 2(2) and 3(2)
The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 2002	S.R. 2002 No. 31	The whole Regulations
The Social Security (Amendment) (Residential Care and Nursing Homes) Regulations (Northern Ireland) 2002	S.R. 2002 No. 132	Regulations 4(2) and 5(2)
The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations (Northern Ireland) 2003	S.R. 2003 No. 397	The whole Regulations
The Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005	S.R. 2005 No. 458	Regulations 7 and 8

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 to provide the circumstances in which an attendance allowance or the care component of a disability living allowance shall not be payable where a person is resident in a care home (an establishment that provides accommodation together with nursing or personal care). The circumstances are where any of the costs of any qualifying services (accommodation, board or personal care) provided for a person in a care home are met, in whole or in part, out of public or local funds under a specified enactment.

Regulation 4 provides transitional and saving provisions.

Regulation 5 makes consequential revocations.

These Regulations are made in consequence of section 54 of the Welfare Reform Act (Northern Ireland) 2007 which was brought into operation for the purpose only of authorising the making of regulations on 8th October 2007, and for all other purposes on 29th October 2007, by virtue of the Welfare Reform (2007 Act) (Commencement No. 2) Order (Northern Ireland) 2007 (S.R. 2007 No. 429 (C. 27)). As the Regulations are made before the end of the period of 6 months from the commencement of that provision, they are exempt by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 from reference to the Social Security Advisory Committee.