

1993 No. 149

HOUSING; RATES; SOCIAL SECURITY**The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993**

Made 29th March 1993

Coming into operation 1st April 1993

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 67(2), 72(8), 122(1)(a), (c) and (d), 129(2), 131(1), 132(3) and (4)(a) and (b) and 133(2)(c) and (d)(i), (h), (i) and (l) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and sections 5(1)(j), (l), (m), (p) and (q), 25(1)(b) and 71(1)(b) of the Social Security Administration (Northern Ireland) Act 1992(b) and of all other powers enabling it in that behalf, and after agreement by the Social Security Advisory Committee that proposals to make these regulations should not be referred to it(c), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993 and shall come into operation on 1st April 1993.

(2) In these regulations—

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

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(e);

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(f);

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(g);

(a) 1992 c. 7

(b) 1992 c. 8

(c) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

(d) S.R. 1992 No. 20, amended by S.R. 1992 Nos. 143 and 481

(e) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 67 and 141, S.R. 1989 No. 40, S.R. 1990 No. 398 and S.R. 1991 No. 488

(f) S.R. 1992 No. 32; relevant amending regulations are S.R. 1992 No. 144

(g) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 Nos. 314 and 424, S.R. 1989 No. 408, S.R. 1990 Nos. 297 and 442 and S.R. 1992 Nos. 404 and 549

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(a).

(3) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 1972 Order” there shall be inserted the following definition—

“ “the Registered Homes Order” means the Registered Homes (Northern Ireland) Order 1992(c);”;

(b) the definition of “home for persons in need” shall be omitted;

(c) after the definition of “premises” there shall be inserted the following definition—

“ “preserved right” means a preserved right for the purpose of regulation 19;”;

(d) after the definition of “residential accommodation” there shall be inserted the following definitions—

“ “residential allowance” means the weekly amount determined in accordance with paragraph 2A of Schedule 2(d);

“residential care home” except in paragraph 2A of Schedule 2, has the meaning prescribed in regulation 19(2);”.

(3) In regulation 17(1) (applicable amounts) after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(bb) an amount in respect of himself or, if he is a member of a family, an amount in respect of any member of the family aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (applicable amounts);”.

(4) In regulation 18(1) (polygamous marriages) after sub-paragraph (c) there shall be inserted the following sub-paragraph—

“(cc) an amount, whether in respect of himself or any member of his household aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (applicable amounts);”.

(5) In regulation 19 (persons in residential care homes and nursing homes)—

(a) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 Nos. 146, 193, 274, 318 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 Nos. 33 and 131, S.R. 1991 Nos. 46, 170, 204 and 338 and S.R. 1992 Nos. 6, 18, 147, 201 and 403

(b) 1954 c. 33 (N.I.)

(c) S.I. 1992/3204 (N.I. 20)

(d) Paragraph 2A is inserted by regulation 2(6) of these regulations

(a) in paragraph (1) for the words preceding “his weekly applicable amount” there shall be substituted the following—

“19.—(1) Subject to regulation 22 (reductions in applicable amounts), where a claimant has a preserved right and either—

- (a) lives in a residential care home or nursing home; or
- (b) is a member of a family and he and the members of his family live in such a home,”;

(b) after paragraph (1ZA) there shall be inserted the following paragraphs—

“(1ZB) Subject to paragraph (1ZE), in this regulation a person has a preserved right where—

(a) on 31st March 1993, he was living in a home for persons in need or a nursing home, and—

- (i) was entitled to income support for the benefit week in which that day fell and his applicable amount was calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care homes and nursing homes), or
- (ii) was not in that week entitled to income support because he was able to meet the cost of the accommodation from other sources available to him, but subsequently becomes entitled to income support; or

(b) he would have been living in a home for persons in need or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

- (i) except in a case to which head (ii) applies—
 - (aa) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (bb) 13 weeks, where the person was before his absence a permanent resident in the home, or
- (ii) 52 weeks, where throughout the period of absence the person was a patient, and the provisions of sub-paragraph (a) would have applied to him but for that absence.

(1ZC) Subject to paragraphs (1ZD) and (1ZE), a person also has a preserved right where—

(a) on 31st March 1993 he was living in a home for persons in need or nursing home within the meaning of paragraph (2) as then in operation, and was entitled to income support but his applicable amount was not calculated in accordance with Part I of Schedule 4 because he was a person to whom paragraph 13 of Schedule 4 applied; and

(b) after 31st March 1993, either—

- (i) he moved from the home in which he was residing on that date to a residential care home or another nursing home, or

- (ii) the ownership of the home changed, and in the home to which he moved, or as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a person other than a close relative of his or by any member of his family, and are provided on a commercial basis.

(1ZD) Where a person has a preserved right under paragraph (1ZC), that right shall commence on the first full day of residence in the residential care home or nursing home to which he moved, or, as the case may be, the day after the ownership of the property changed.

(1ZE) Paragraphs (1ZB) and (1ZC) shall cease to apply to a person who has a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks, where throughout the period of absence the person was a patient.

(1ZF) (a) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right where either—

- (i) he moves from the home he resided in, or would, but for an absence specified in paragraph (1ZB)(b), have resided in, on 31st March 1993, to a residential care home or another nursing home, or
 - (ii) the ownership of that home changes, and in the home to which he moves or, as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a close relative of his, or by a member of his family, and are provided otherwise than on a commercial basis;
- (b) a preserved right acquired under paragraph (1ZB) or (1ZC) which ceased to apply to a person in accordance with sub-paragraph (a) shall, notwithstanding that paragraph, revive and again apply in his case where—
- (i) he moves from the home mentioned in sub-paragraph (a)(i) to another residential care home or nursing home, or
 - (ii) the ownership of that home changes, or in the case of a home mentioned in sub-paragraph (a)(ii), changes again,

and in the home to which he moves or, as the case may be, following the change or further change of ownership, the accommodation and meals (if any) are provided for him otherwise than by a close relative of his, or by a member of his family, and are provided on a commercial basis.

(1ZG) For the purposes of paragraphs (1ZB) and (1ZE) a person is a permanent resident in a home for persons in need, residential care home or nursing home where the home is his principal place of abode, and a temporary resident where it is not.

(1ZH) In this regulation the expression "home for persons in need" has the meaning it bore on 31st March 1993."

(6) In Schedule 2 (applicable amounts) after paragraph 2 there shall be inserted the following paragraph—

"2A.—(1) The weekly amount for the purposes of regulations 17(1)(bb) and 18(1)(cc) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be £45.00.

(2) Subject to sub-paragraphs (3) and (4), the conditions are—

(a) the person resides in a residential care home or a nursing home and for this purpose a person shall be regarded as residing in such a home during any period of absence from the home which does not exceed 6 days;

(b) he does not have a preserved right;

(c) he is aged 16 or over;

(d) both the person's accommodation and such meals (if any) as are provided for him are provided on a commercial basis; and

(e) no part of the weekly charge for accommodation is met by housing benefit.

(3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides is—

(a) registered under Part II of the Registered Homes Order; or

(b) managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board) and provides both board and personal care for the claimant,

and a person resides in a nursing home where the home in which he resides is such a home for the purposes of regulation 19.

(4) For the purposes of sub-paragraph (2), a person shall not be regarded as residing in a nursing home where the home in which he resides is a hospice, and for this purpose "hospice" means a nursing home which is registered under Part III of the Registered Homes Order and which provides nursing for persons resident therein who suffer from a progressive disease and for whom the purpose of treatment is palliative.

(5) Where—

- (a) a person has been registered under the Registered Homes Order in respect of premises which have been carried on as a residential care home or, as the case may be, a nursing home, and that person has ceased to carry on such a home; and
- (b) an application for registration under that Order has been made by another person and that application has not been determined or abandoned,

then any question arising for determination under this paragraph shall be determined as if the most recent registration under that Order in respect of those premises continued until the day on which the application is determined or abandoned.”.

Amendment of the Housing Benefit Regulations

3.—(1) The Housing Benefit Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) after the definition of “the Order” there shall be inserted the following definition—

“ “the Registered Homes Order” means the Registered Homes (Northern Ireland) Order 1992;”.

(3) In regulation 5(9) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) for the definition of “residential accommodation” there shall be substituted the following definition—

“ “residential accommodation” means accommodation which is provided by an establishment—

- (a) under Article 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972(a) where—
 - (i) board is available to the claimant, and
 - (ii) the home in which the accommodation is provided is either owned or managed by a Health and Social Services Board;
- (b) registered under Part II of the Registered Homes Order;
- (c) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
- (d) managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision;
- (e) in premises registered under Part III of the Registered Homes Order;
- (f) in paragraph (a) “board” refers to the availability to the claimant, in the home in which his accommodation is provided, of cooked or

(a) S.I. 1972/1265 (N.I. 14); Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53) and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992. Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992

prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, and is made available for his consumption without any further charge to him;”.

(4) In regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling)—

(a) in paragraph (1)(e) “in so far as such payments are payments by way of rent” shall be omitted;

(b) in paragraph (2) sub-paragraphs (a) and (b) shall be omitted;

(c) after paragraph (3) there shall be added the following paragraphs—

“(4) Subject to paragraphs (6) to (14), paragraph (5) applies to a person who—

(a) occupies or is treated by regulation 5(8) as occupying residential accommodation on 31st March 1993;

(b) is or was liable to make payments in respect of that accommodation for that day;

(c) is a person to whom paragraph (2)(a) or (b) applies immediately before 1st April 1993; and

(d) is or was entitled to housing benefit in respect of the liability mentioned in sub-paragraph (b).

(5) In the case of a person to whom this paragraph applies, this regulation shall continue to apply to him as if the amendments specified in regulation 3(4)(b) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993(a) had not been made.

(6) Subject to paragraphs (8) to (14), paragraph (7) applies to a person who—

(a) occupies or is treated under regulation 5(8) as occupying accommodation in an establishment which on 1st April 1993 is registered as a small home under Part II of the Registered Homes Order;

(b) was occupying or was treated under regulation 5(8) as occupying that accommodation on 31st March 1993;

(c) is or was liable to make payments in respect of that accommodation for 31st March 1993; and

(d) is or was entitled to housing benefit in respect of that liability.

(7) In the case of a person to whom this paragraph applies, paragraph (3) shall apply as if sub-paragraph (a) was omitted.

(8) Subject to paragraphs (10) to (14), paragraph (9) applies to a person who—

- (a) occupies or is treated by regulation 5(8) as occupying residential accommodation on 31st March 1993;
- (b) is or was liable to make payments in respect of that accommodation for that day; and
- (c) is or was entitled to housing benefit in respect of the liability mentioned in sub-paragraph (b).

(9) In the case of a person to whom this paragraph applies, this regulation shall continue to apply to him as if the amendments specified in regulation 3(4)(a) and (6) of the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993 had not been made.

(10) Subject to paragraph (11), where on 1st April 1993 paragraph (5), (7) or (9) applies to a person that paragraph shall cease to apply to him—

- (a) on the day on which he is first absent from the accommodation which he occupied or was treated under regulation 5(8) as occupying on 31st March 1993; and
- (b) on any day which falls after that day.

(11) For the purposes of paragraph (10), any absence which is temporary shall be disregarded and for those purposes an absence is temporary where during the absence the person is treated by regulation 5(8) as occupying the accommodation as his home.

(12) Where a person—

- (a) ceases to be entitled to housing benefit; and
- (b) was before he ceased to be entitled a person to whom paragraph (5), (7) or (9) applied,

that paragraph shall not apply to him in the case of any subsequent claim for housing benefit except where the claim takes effect in accordance with regulation 72(12) or (13) (time and manner in which claims are to be made) immediately after the end of the benefit period.

(13) Where on 31st March 1993 a person occupies or is treated as occupying an establishment mentioned in paragraph (6)(a) and on a day subsequent to that date the establishment, if it was registered under Part II of the Registered Homes Order, ceases to be so registered, then on that day and on any day thereafter paragraph (7) shall not apply to that person.

(14) In this regulation “small home” has the same meaning as in Part II of the Registered Homes Order by virtue of Article 4(5) of that Order.”

(5) In regulation 8(2) (eligible housing costs)—

- (a) in sub-paragraph (a) after “for that benefit includes” there shall be inserted “a residential allowance under paragraph 2A of Schedule 2 to

the Income Support (General) Regulations (Northern Ireland) 1987 or"; and

- (b) for sub-paragraph (b) there shall be substituted the following sub-paragraph—

“(b) payments in respect of accommodation provided under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 where board is available to the claimant, and for the purposes of this sub-paragraph “board” refers to the availability to the claimant in the home in which his accommodation is provided of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, and is made available for his consumption without any further charge to him;”.

(6) In regulation 9(2) (rates) “or would be liable but for the provisions of regulation 7(1)(e)” shall be omitted.

Amendment of the Disability Living Allowance Regulations

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

(2) Regulation 9(5) (persons in certain accommodation other than hospitals) shall be omitted.

(3) In regulation 10 (exemption from regulations 8 and 9)—

(a) in paragraph (1) for “Subject to paragraphs (2) and (3)” there shall be substituted “Subject to paragraphs (2) to (8)”;

(b) after paragraph (5) there shall be added the following paragraphs—

“(6) Regulation 8, or, as the case may be, regulation 9, shall not apply in the case of a person who is residing in a hospice and is terminally ill where the Department has been informed that he is terminally ill—

(a) on a claim for the care component;

(b) on an application for a review of an award of disability living allowance; or

(c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, disability living allowance.

(7) In paragraph (6) “hospice” means a hospital or other institution other than—

(a) a hospital or similar institution under the Order or the 1991 Order; or

(b) a hospital or similar institution maintained or administered by the Defence Council.

(8) Regulation 9 shall not apply in any particular case for any period during which—

- (a) the person for whom the accommodation is provided—
 - (i) is not entitled to income support,
 - (ii) is not entitled to housing benefit, or
 - (iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member; and
- (b) the whole of the cost of the accommodation is met—
 - (i) out of the person's own resources, or partly out of his own resources and partly with assistance from another person or a charity, or
 - (ii) on his behalf by another person or a charity.''.

(4) Where a person has a preserved right, regulations 9 and 10 of the Disability Living Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (2) and (3) had not been made.

(5) For the purposes of paragraph (4), but subject to paragraph (6), a person has a preserved right where—

- (a) on 31st March 1993, he was living in a home registered under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971(a) as a home for persons in need or a nursing home; or
- (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (bb) 13 weeks, where the person was before his absence a permanent resident in the home, or
 - (ii) 52 weeks, where throughout the period of his absence he was receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(b).

(6) Paragraphs (4) and (5) shall cease to apply to a person who has a preserved right where he is absent from a home such as is mentioned in paragraph (5)(a) and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or

(a) 1971 c. 32

(b) S.R. 1975 No. 109; relevant amending regulations are S.R. 1992 No. 453

(b) 52 weeks, where throughout the period of his absence he was receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.

(7) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

Amendment of the Attendance Allowance Regulations

5.—(1) The Attendance Allowance Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 7(1) (persons in certain accommodation other than hospitals) for “paragraphs (2) and (3)” there shall be substituted “paragraph (3)”.

(3) Regulation 7(2) shall be omitted.

(4) In regulation 8 (exemption from regulations 6 and 7)—

(a) in paragraph (1) for “Subject to paragraph (3)” there shall be substituted “Subject to paragraphs (2) to (6)”; and

(b) after paragraph (3) there shall be added the following paragraphs—

“(4) Regulation 6 or, as the case may be, regulation 7 shall not apply in the case of a person who is residing in a hospice and is terminally ill where the Department has been informed that he is terminally ill—

(a) on a claim for attendance allowance;

(b) on an application for a review of an award of attendance allowance; or

(c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, attendance allowance.

(5) In paragraph (4) “hospice” means a hospital or other institution other than—

(a) a hospital or similar institution under the Order or the 1991 Order; or

(b) a hospital or similar institution maintained or administered by the Defence Council.

(6) Regulation 7 shall not apply in any particular case for any period during which—

(a) the person for whom the accommodation is provided—

(i) is not entitled to income support,

(ii) is not entitled to housing benefit, or

(iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member; and

(b) the whole of the cost of the accommodation is met—

- (i) out of the person's own resources, or partly out of his own resources and partly with assistance from another person or a charity, or
- (ii) on his behalf by another person or a charity."

(5) Where a person has a preserved right, regulations 7 and 8 of the Attendance Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (2) to (4) had not been made.

(6) For the purposes of paragraph (5), but subject to paragraph (7), a person has a preserved right where—

- (a) on 31st March 1993, he was living in a home registered under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971 as a home for persons in need or a nursing home; or
- (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (bb) 13 weeks, where the person was before his absence a permanent resident in the home, or
 - (ii) 52 weeks, where throughout the period of his absence he was receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.

(7) Paragraphs (5) and (6) shall cease to apply to a person who has a preserved right where he is absent from the home such as is mentioned in paragraph (6)(a) and that absence exceeds a period of—

- (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks, where throughout the period of his absence he was receiving free in-patient treatment within the meaning of regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.

(8) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

Community care

6. Schedule 1, which contains amendments consequential on the introduction of community care, shall have effect.

Registered homes

7. Schedule 2, which contains amendments consequential on the introduction of the Registered Homes (Northern Ireland) Order 1992(a), shall have effect.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 29th March 1993.

(L.S.)

A. Devlin

Assistant Secretary

Amendments Consequential Upon the Introduction of Community Care*Amendment of the Income Support Regulations*

1.—(1) The Income Support Regulations shall be amended in accordance with sub-paragraphs (2) to (7).

(2) In regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household) paragraph (3)(c) shall be omitted.

(3) In regulation 19(2) (persons in residential care and nursing homes)—

(a) after the definition of “nursing home” there shall be inserted the following definition—

“ “residential care home” means an establishment—

(a) which is required to be registered under Part II of the Registered Homes Order and is so registered;

(b) run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society; or

(c) which provides residential accommodation with both board and personal care and is managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board),

and in paragraph (c) “personal care” means personal care for persons in need of personal care by reason of old age and infirmity, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.”;

(b) the definition of “home for persons in need” shall be omitted.

(4) In regulation 21 (special cases)—

(a) in paragraph (3) for the definition of “residential accommodation” there shall be substituted the following definition—

“ “residential accommodation” means, subject to paragraphs (3A), (4), (4A) and (5), accommodation provided or arranged by the Department under Article 15 or 36 of the 1972 Order(a) in a home owned or managed by a Health and Social Services Board where the accommodation is provided for a person whose stay in that accommodation has become other than temporary.”;

(b) for paragraph (4) there shall be substituted the following paragraph—

“(4) A person who would, but for this paragraph, be in residential accommodation within the meaning of paragraph (3) shall not be treated as being in residential accommodation if he is a person—

(a) who is staying in a residential care home as defined in regulation 19(2) (persons in residential care homes and nursing homes) under the provisions referred to in sub-paragraph (b) of the definition of “residential accommodation” in paragraph (3) where—

(a) Article 15 was extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 and amended by Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991 and paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992. Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992.

- (i) the weekly cost of such accommodation exceeds the maximum amount provided for under regulation 19 and paragraphs 6, 8, 9 and 10 of Schedule 4 (applicable amounts of persons in residential care homes and nursing homes) in respect of such accommodation, and
- (ii) the Department accepts responsibility for the making of arrangements for the provision of such accommodation for that person in the light of that person being entitled to such maximum amount as a person in a residential care home under and by virtue of that regulation, provided that in the case of a person over pensionable age the Department had accepted such responsibility for a period of not less than 2 years immediately before that person attained pensionable age; or
 - (b) for whom board is not provided.”;
- (c) in paragraph (4A) for “In paragraph (3), paragraphs (a)(i) and (b)(i) of the definition of “residential accommodation” ” there shall be substituted “In paragraph (4), sub-paragraph (b)”.
- (5) In regulation 71(1)(c) (applicable amounts in urgent cases)—
 - (a) in head (i) for “90 per cent.” there shall be substituted “98 per cent.”;
 - (b) head (iii) shall be omitted.
- (6) In Schedule 7 (applicable amounts in special cases)—
 - (a) in column (2)—
 - (i) in paragraphs 10A and 10B(1) (single claimants temporarily in accommodation and couples and members of polygamous marriages where one member is or all are temporarily in accommodation) for “£54·15 of which £43·30 is in respect of the cost of the accommodation and £10·85 for personal expenses” there shall be substituted “£54·15 of which £10·85 is for personal expenses”;
 - (ii) in paragraph 10B(2) and (3) for “£54·15 of which £43·30 is in respect of the accommodation and £10·85 for personal expenses” there shall be substituted “£54·15 of which £10·85 is for personal expenses”;
 - (iii) in paragraph 10C (lone parents who are in residential accommodation temporarily) for “£54·15 of which £43·30 is in respect of accommodation and £10·85 for personal expenses” there shall be substituted “£54·15 of which £10·85 is for personal expenses”;
 - (iv) in paragraph 13(1)(a) (persons in residential accommodation) for “£54·15 of which £43·30 is in respect of the cost of the residential accommodation and £10·85 for personal expenses” there shall be substituted “£54·15 of which £10·85 is for personal expenses”;
 - (b) in column (1)—
 - (i) in paragraph 10A “Except where paragraph 10B(4) applies,” shall be omitted;
 - (ii) in paragraph 10B sub-paragraph (4) shall be omitted;
- (c) paragraph 10D (lone parents who are in homes for persons in need or nursing homes temporarily) shall be omitted;
- (d) in column (1) of paragraph 14 (persons temporarily absent from a residential care home or nursing home) in sub-paragraph (a) “sub-paragraph (a) or (b) (excluding heads (i) and (ii) of those sub-paragraphs) of” shall be omitted.
- (7) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 15(2) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes or nursing homes) or by the Department under Article 36(3) of the 1972 Order”;
- (b) in paragraph 30(d) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes and nursing homes) or the amount payable by the Department under Article 36(3) of the 1972 Order”.

Amendment of Schedule 8A to the Claims and Payments Regulations

2.—(1) The Claims and Payments Regulations shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In Schedule 8A (deductions from benefits and direct payment to third parties) in paragraph 4(1) (miscellaneous accommodation costs) for the words preceding “the adjudicating authority may determine” there shall be substituted the following—

“4.—(1) Subject to paragraph 8, where an award of income support—

- (a) is made to a person in a residential care home or nursing home as defined in regulation 19(2) of the Income Support Regulations, or
- (b) includes an amount under Schedule 4 (applicable amounts of persons in residential care homes and nursing homes) or paragraph 13 of Schedule 7 (persons in residential accommodation) to the Income Support Regulations,

(hereafter in this paragraph referred to as “miscellaneous accommodation costs”)

- (3) In paragraph 4(2) after head (a) there shall be inserted the following head—
 - “(aa) an amount equal to the amount of any payment the beneficiary is liable to make to the Department under Article 36(3) or 99(1) of the Health and Personal Social Services (Northern Ireland) Order 1972; or”.

Amendments Consequential Upon the Introduction of the Registered Homes (Northern Ireland) Order 1992

Amendment of the Social Security (Adjudication) Regulations

1. In regulation 69 of the Social Security (Adjudication) Regulations (Northern Ireland) 1987(a) (review in income support cases) in paragraphs (5) and (6) for “home for persons in need” there shall be substituted “residential care home”.

Amendment of the Attendance Allowance Regulations

2. In regulation 7(4) of the Attendance Allowance Regulations (persons in certain accommodation other than hospitals) in sub-paragraphs (a) and (b) for “a home for persons in need” in each of those sub-paragraphs there shall be substituted “a residential care home”; and for “ “home for persons in need” has the same meaning as in Article 2(2) of the Order” there shall be substituted “ “residential care home” has the same meaning as in Article 3 of the Registered Homes (Northern Ireland) Order 1992”.

Amendment of the Claims and Payments Regulations

3.—(1) The Claims and Payments Regulations shall be amended in accordance with sub-paragraphs (2) and (3).

(2) In Schedule 7 (manner and time of payment, effective date of change of circumstances and commencement of entitlement in income support cases) in paragraph 7(3)(c) for “a home for persons in need” there shall be substituted “a residential care home”.

(3) In Schedule 8A (deductions from benefits and direct payments to third parties) in paragraph 1 (interpretation), in the definition of “hostel” for “a home for persons in need” there shall be substituted “a residential care home”.

Amendment of the Disability Living Allowance Regulations

4. In regulation 9(7) of the Disability Living Allowance Regulations (persons in certain accommodation other than hospitals) in sub-paragraphs (a) and (b) for “a home for persons in need” in each of those sub-paragraphs there shall be substituted “a residential care home”; and for “ “home for persons in need” has the same meaning as in Article 2(2) of the Order” there shall be substituted “ “residential care home” has the same meaning as in Article 3 of the Registered Homes (Northern Ireland) Order 1992”.

Amendment of the Housing Benefit Regulations

5. In regulation 7 of the Housing Benefit Regulations (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling) for paragraph (3) there shall be substituted the following paragraph—

“(3) In this regulation “residential accommodation” means accommodation which is provided by an establishment—

(a) registered under Part II of the Registered Homes Order and which is a residential care home within the meaning of regulation 19(2) of the Income Support (General) Regulations (Northern Ireland) 1987(b);

(a) S.R. 1987 No. 82; relevant amending regulations are S.R. 1987 No. 466 and S.R. 1991 No. 488
(b) S.R. 1987 No. 459; the definition of “residential care home” is inserted by paragraph 1(3)(a) of Schedule 1 to these regulations

- (b) in premises registered under Part III of the Registered Homes Order; or
- (c) in respect of which—
 - (i) a person has been registered under the Registered Homes Order and which has ceased to be a residential care home within the meaning of that Order and regulation 19(2) of the Income Support (General) Regulations (Northern Ireland) 1987 or, as the case may be, a nursing home within the meaning of that Order; and
 - (ii) an application for registration under that Order has been made by another person and that application has not been determined or abandoned.”.

Amendment of the Income Support Regulations

6.—(1) The Income Support Regulations shall be amended in accordance with sub-paragraphs (2) to (15).

(2) In regulation 6 (persons not treated as engaged in remunerative work) for paragraph (g) there shall be substituted the following paragraph—

“(g) he is in employment and lives in, or is temporarily absent from, a residential care home, a nursing home or residential accommodation and his, or his partner’s, applicable amount falls to be calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care homes and nursing homes) or, as the case may be, paragraphs 9, 10 to 10C, 13, 14 or 16 of Schedule 7 (applicable amounts in special cases);”.

(3) In regulation 16(3)(e) (circumstances in which a person is to be treated as being or not being a member of the household) for “a home for persons in need” there shall be substituted “a residential care home”.

(4) In regulation 17(4)(a) (applicable amounts) in head (iii) for “a home for persons in need” there shall be substituted “a residential care home”.

(5) In regulation 19 (persons in residential care homes and nursing homes)—

(a) in paragraph (1A) for “a home for persons in need” there shall be substituted “a residential care home”;

(b) in paragraph (2) for the definition of “nursing home” there shall be substituted the following definition—

“ “nursing home” means—

(a) any premises registered under Part III of the Registered Homes Order; or

(b) any premises used for the reception of such persons or the provision of such nursing or services as is mentioned in Article 16 of the Registered Homes Order and which are maintained or controlled by any body of persons constituted by a statutory provision or incorporated by Royal Charter;”;

(c) for paragraph (4) there shall be substituted the following paragraph—

“(4) Notwithstanding paragraphs (1) to (3), where—

(a) a person has been registered under Part II of the Registered Homes Order in respect of premises which have been carried on as a residential care home or, as the case may be, registered under Part III of that Order in respect of premises which have been carried on as a nursing home, and that person has ceased to carry on such a home; and

(b) an application for registration under that Order has been made by another person and that application has not been determined or abandoned,

the applicable amount of a person resident in those premises shall be determined under Schedule 4 as if the most recent registration under Part II or, as the case may be, Part III of the Registered Homes Order, in respect of those premises continued until the day on which the application is determined or abandoned.”

(6) In regulation 21 (3A) (special cases) for “a home for persons in need within the meaning of regulation 19(2) (persons in homes for persons in need and nursing homes)” there shall be substituted “a residential care home within the meaning of regulation 19(2) (persons in residential care homes and nursing homes)”.

(7) In regulation 22(1)(b) (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes and nursing homes)”.

(8) In regulations 42(4)(a)(ii) (notional income) and 51(3)(a)(ii) (notional capital) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes and nursing homes)”.

(9) In regulation 71(1)(b) (applicable amounts in urgent cases)—

(a) for “a home for persons in need” there shall be substituted “a residential care home”;

(b) in head (i) for “(applicable amounts of persons in homes for persons in need and nursing homes)” there shall be substituted “(applicable amounts of persons in residential care homes and nursing homes)”.

(10) In regulation 73(2) (amount of income support payable) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes and nursing homes)”.

(11) In Schedule 3 (housing costs) in paragraph 4 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) in sub-paragraph (9)(b) for the definition of “residential accommodation” there shall be substituted the following definition—

“ “residential accommodation” means accommodation—

(i) provided under Article 15 or 36 of the 1972 Order;

(ii) which is a residential care home, or

(iii) which is a nursing home;”.

(12) In Schedule 4 (applicable amounts of persons in residential care homes and nursing homes)—

(a) in paragraph 2(2)(a) for “the home for persons in need” there shall be substituted “the residential care home”;

(b) in paragraph 6(1)(a) (residential care homes) for “age and infirmity” there shall be substituted “old age and infirmity”;

(c) in paragraph 9—

(i) in sub-paragraph (a) for “a home for persons in need registered under Article 35 of, and Schedule 5 to, the 1972 Order” there shall be substituted “a residential care home registered under Part II of the Registered Homes Order”;

(ii) in sub-paragraph (b) for “a home for persons in need” there shall be substituted “a residential care home”;

- (d) in paragraph 10—
- (i) for “a home for persons in need” in each place where those words appear there shall be substituted “a residential care home”;
 - (ii) in sub-paragraph (2) for “registered under Article 35 of, and Schedule 5 to, the 1972 Order” there shall be substituted “registered under Part II of the Registered Homes Order”;
- (e) in paragraph 11(3)(a) (circumstances in which the maximum is not to apply) for “a home for persons in need” there shall be substituted “a residential care home”;
- (f) in paragraph 15 for “a home for persons in need” there shall be substituted “a residential care home”;
- (g) for paragraph 17 there shall be substituted the following paragraph—
- “17. A person who is living in a residential care home within the meaning of paragraph (c) of the definition of “residential care home” in regulation 19(2) and who is not in receipt of personal care by reason of old age and infirmity, past or present mental disorder, past or present dependence on alcohol or drugs, mental handicap or physical disability.”
- (13) In Schedule 7 (applicable amounts in special cases)—
- (a) in column (1), in paragraph 9 (specified cases of temporarily separated couples)—
- (i) in sub-paragraph (a) for head (ii) there shall be substituted the following head—
- “(ii) resident in a residential care home;”;
- (ii) in sub-paragraph (b) for head (iv) there shall be substituted the following head—
- “(iv) resident in a residential care home or a nursing home.”;
- (b) in column (1), in paragraph 10 (polygamous marriages where one or more partners are temporarily separated) for sub-paragraph (b) there shall be substituted the following sub-paragraph—
- “(b) resident in a residential care home;”;
- (c) in column (1), in paragraph 14 (persons temporarily absent from a residential care home or nursing home)—
- (i) for “(persons in homes for persons in need and nursing homes)” there shall be substituted “(persons in residential care homes and nursing homes)”;
 - (ii) in sub-paragraph (c) for “a home for persons in need” there shall be substituted “a residential care home”.
- (14) In Schedule 8 (sums to be disregarded in the calculation of earnings) in the following provisions for “a home for persons in need” there shall be substituted “a residential care home”—
- (a) paragraph 4(2);
 - (b) paragraph 4(3)(a)(ii);
 - (c) paragraph 4(4)(a);
 - (d) paragraph 4(5)(a)(ii); and
 - (e) paragraph 5.
- (15) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 9 for “a home for persons in need” there shall be substituted “a residential care home”;
- (b) in paragraph 9A for “a home for persons in need” in both places where those words appear there shall be substituted “a residential care home”.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the Housing Benefit (General) Regulations (Northern Ireland) 1987, the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 and the Social Security (Adjudication) Regulations (Northern Ireland) 1987.

They contain amendments arising out of the community care reforms which are being introduced on 1st April 1993 and the Registered Homes (Northern Ireland) Order 1992 which is operative from 1st April 1993.

With respect to income support they—

- (a) insert a definition of “the Registered Homes Order”, “preserved right”, “residential allowance” and “residential care home” and omit the definition of “home for persons in need” at regulation 2(1) (regulation 2(2));
- (b) introduce a new residential allowance as part of a persons applicable amount for those in residential care homes and nursing homes (regulation 2(3), (4) and (6));
- (c) exclude from the new residential allowance those who were living in homes for persons in need on 31st March 1993 for so long as they have a “preserved right” to the higher levels of income support specified in Schedule 4 to the Income Support Regulations: those with a preserved right are identified (regulation 2(5)).

With respect to housing benefit they—

- (a) insert a definition of “the Registered Homes Order” at regulation 2(1) (regulation 3(2));
- (b) amend the meaning of residential accommodation so as to provide that references to that accommodation relate only to accommodation where board is provided (regulation 3(3));
- (c) provide that those in residential accommodation who are either in remunerative work or liable to make payments in respect of the dwelling to a close relative will from 1st April 1993 be treated as not liable to make payments in respect of a dwelling; and preserve existing

provisions for such persons who are treated as so liable on 31st March 1993 (regulation 3(4));

- (d) provide that housing benefit is not payable to a person who is provided with board and accommodation (regulation 3(5));
- (e) amend the provision for apportionment of inclusive rents after 1st April 1993 (regulation 3(6)).

With respect to disability living allowance and attendance allowance they enable the appropriate allowance to be payable where the person resides in a hospice or where the person meets the whole of the cost of the accommodation (regulations 4 and 5).

Schedule 1 contains further amendments consequential on the changes arising on the introduction of the community care reforms.

Schedule 2 contains further minor amendments consequential on the changes arising on the introduction of the Registered Homes (Northern Ireland) Order 1992.