

1975 No. 98

SOCIAL SECURITY**The Social Security (Guardian's Allowances) 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 the powers conferred on it by sections 38(3) and (4) and 152(a) of the Social Security (Northern Ireland) Act 1975(a), and section 2 of, and paragraph 3 of Part I 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:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Guardian's Allowances) 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;

“determining authority” means, as the case may require, an insurance officer, a local tribunal or a Commissioner by whom the relevant question falls to be determined under Part III of the Act;

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

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

(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.

Adopted children

2. Where a child has been adopted in pursuance of an order made in the United Kingdom, the Channel Islands or the Isle of Man or by a foreign adoption within the meaning of section 4 of the Adoption (Hague Convention) Act (Northern Ireland) 1969(d), section 38(2) of the Act (circumstances in which guardian's allowance may be payable) shall be modified so as to have effect—

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

(c) 1889 c. 63
(d) 1969 c. 22 (N.I.)

- (a) in the case of a child adopted by two spouses jointly, as if the references to a child's parents were references to those spouses;
- (b) in the case of a child adopted by one person only, as if the following circumstance were substituted for those in that section, namely that that person is dead.

Illegitimate children

3.—(1) Where a child (other than one to whom regulation 2 above applies) is illegitimate and—

- (a) a person has been found by a court of competent jurisdiction to be the father of the child, or
 - (b) there is no such finding but in the opinion of the determining authority the paternity of the child has been admitted or established,
- section 38(2) of the Act shall be modified so as to have effect as if the mother and father of the child were the child's parents within the meaning of that section.

(2) In the case of any illegitimate child (other than one to whom regulation 2 above or paragraph (1) of this regulation applies) the said section 38(2) shall be modified so as to have effect as if the following circumstance were substituted for those in that section, namely that the mother of the child is dead.

Children of divorced persons, etc.

4.—(1) Where the marriage of a child's parents was terminated by divorce and where, at the death of one of the parents, the child was not in the custody of, or being maintained by, the other parent and there was no order of a court granting custody of the child to that other parent or imposing any liability on him for the child's maintenance, then section 38(2) of the Act shall be modified so as to have effect as if the circumstances in paragraph (a) were that one of the child's parents were dead and paragraphs (b) and (c) did not apply.

(2) In the case of a child to whom regulation 2(a) above applies paragraph (1) of this regulation shall have effect as if the child's parents were the spouses who adopted him.

(3) For the purposes of this regulation, a voidable marriage which has been annulled, whether before or after the date when this regulation comes into force, shall be treated as if it had been a valid marriage which was terminated by divorce at the date of the annulment.

Children whose surviving parents are in prison or legal custody

5.—(1) Subject to the following provisions of this regulation, the circumstances in which a person is to be treated for the purposes of section 38(2)(c) of the Act as being in prison are that he is serving a sentence of imprisonment of not less than 5 years or of imprisonment for life, or is in legal custody as a person sentenced or ordered to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known.

(2) For the purpose only of calculating the period of 5 years referred to in paragraph (1), (4) or (9) of this regulation—

- (a) no account shall be taken of any period of the sentence served before the death of the deceased parent;
- (b) no account shall be taken of any reduction in the period of the sentence by virtue of any enactment providing for it to be treated as reduced in respect of any period of custody before sentence;
- (c) any continuous period (other than a period before the death of the deceased parent) immediately preceding the imposition of the sentence, being a period throughout which the offender was in custody and not serving a sentence of imprisonment, shall be aggregated with the sentence;
- (d) consecutive sentences shall be aggregated, so however that there shall be excluded from aggregation with a later sentence such period (if any) of an earlier sentence (not being a sentence of 5 years or more) as was served before the imposition of the later sentence;

so however that nothing in this paragraph shall be construed so as to permit payment of guardian's allowance in respect of any period before the date of sentence.

(3) Subject to the provisions of the next following paragraph, a person shall be treated as not having ceased to be serving such a sentence or to be in such custody as is referred to in paragraph (1) of this regulation if he is transferred to a hospital or is temporarily released or is unlawfully at large.

(4) A person shall be treated as having ceased to be serving such a sentence or to be in such custody as is referred to in paragraph (1) of this regulation if—

- (a) he is released on licence or the remainder of his sentence is remitted or his sentence is reduced on appeal to a term of less than 5 years, or his conviction is quashed on appeal; or
- (b) he is at any time after the commencement of his sentence not in prison and there has expired a period which, measured from the date on which he was last in prison, is equal to the length of his sentence which on that date remained to be served;

so however that if he thereafter returns to prison to resume service of the sentence he shall be treated as serving a sentence of the length which remains to be served at the date of his return.

(5) In determining whether for the purpose of any right to guardian's allowance by virtue of the provisions of this regulation a child is to be treated as a child of the claimant's family, no account shall be taken of any contributions made by the surviving parent towards the cost of providing for that child.

(6) Where a surviving parent contributes towards the cost of providing for his child, the weekly rate of any guardian's allowance payable by virtue of the provisions of this regulation shall be reduced by an amount equal to the rate of that contribution for the calendar week ending last before the week for which the allowance is payable.

(7) For the purposes of paragraph (6) of this regulation—

- (a) if the surviving parent normally so contributes at the weekly rate specified in relation to guardian's allowance in Part III of Schedule

4 to the Act, he shall be treated as continuously so contributing at that rate notwithstanding that for occasional weeks he does not so contribute at that rate or at all;

- (b) the provisions of section 17(2) of the Family Allowances Act (Northern Ireland) 1966(e) (rules as to what is and what is not to be treated as a contribution) shall apply as they apply for the purposes of that Act.

(8) A surviving parent to whom paragraph (1) of this regulation applies shall, on notice being given of his liability by the Department, pay to the National Insurance Fund an amount equal to the guardian's allowance paid by virtue of this regulation in respect of a child of that parent.

(9) In relation to a surviving parent outside Northern Ireland, this regulation shall apply, subject to the necessary modifications, only where he is serving a sentence of imprisonment of not less than 5 years or of imprisonment for life.

Residence condition

6.—(1) For the purposes of section 38(3) of the Act (no entitlement to guardian's allowance in respect of a child unless the prescribed conditions are satisfied) the prescribed conditions shall be that at the relevant time one at least of the child's parents is, or was immediately before his death—

- (a) a British subject whose place of birth is in the United Kingdom; or
- (b) a British subject or a British protected person, who had been present in Northern Ireland (or when not so present been a member of the forces or a merchant seaman) for at least 52 weeks in aggregate out of any period of 2 years after he had attained the age of 16; or
- (c) a person who had been present in Northern Ireland (or when not so present been a member of the forces or a merchant seaman) for at least 156 weeks in the aggregate out of any period of 4 years after he had attained the age of 16.

(2) For the purposes of this regulation—

- (a) "the relevant time" means the date of death of the parent (or other person) whose death gives rise to the claim for guardian's allowance;
- (b) "a British protected person" means a British protected person within the meaning of the British Nationality Act 1948(f); and
- (c) "a member of the forces" and "a merchant seaman" have the meanings assigned to them by regulation 1 of the Family Allowances (Qualifications) Regulations (Northern Ireland) 1970(g), as amended(h).

(3) Section 38(3) of the Act shall be modified so as to have the effect that—

- (a) in the case of a child to whom regulation 2 above applies, a person who adopted the child must satisfy a condition set out in paragraph (1) of this regulation (and the natural parents need not do so);
- (b) in the case of an illegitimate child (other than one to whom subparagraph (a) of this paragraph applies) a condition set out in paragraph (1) of this regulation must be satisfied by the child's mother except that in a case to which regulation 3(1) above applies, it may be satisfied by either his mother or father.

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

(f) 1948 c. 56

(g) S.R. & O. (N.I.) 1970 No. 23 (p. 167)

(h) There is no amendment which relates expressly to the subject matter of these regulations.

Transitional provisions

7.—(1) Where guardian's allowance under the National Insurance Act (Northern Ireland) 1966(i) is payable to any person for a period which has not been completed before 6th April 1975, he shall be entitled, without making a claim for it, to a guardian's allowance under the Social Security (Northern Ireland) Act 1975 for such part of that period as falls on or after 6th April 1975 as if it had been awarded to him under that Act.

(2) In a case where the death of the parent giving rise to the claim occurred before 6th April 1975, the conditions in regulation 6 above shall be deemed to have been satisfied if any person by whom they are to be satisfied in relation to the child in question was an insured person under the National Insurance Act (Northern Ireland) 1966.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 4th April 1975.

(L.S.)

C. G. Oakes

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations contain provisions relating to guardian's allowance under the Social Security (Northern Ireland) Act 1975.

The regulations make provision for cases where the child is adopted (regulation 2), or illegitimate (regulation 3), and where the child's parents are divorced (regulation 4), and where the surviving parent is in prison or other legal custody (regulation 5). The regulations prescribe conditions as to birth in the United Kingdom or residence in Northern Ireland which must have been satisfied by at least one of the child's parents. They also contain transitional provisions.