

2002 No. 87

SOCIAL SECURITY

**The Social Security (Guardian's Allowances) (Amendment)
Regulations (Northern Ireland) 2002**

Made 7th March 2002

Coming into operation 1st April 2002

The Department for Social Development, in exercise of the powers conferred by sections 77(8)(b) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and now vested in it(b), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1. These Regulations may be cited as the Social Security (Guardian's Allowances) (Amendment) Regulations (Northern Ireland) 2002 and shall come into operation on 1st April 2002.

Amendment of the Social Security (Guardian's Allowances) Regulations

2.—(1) Regulation 5 of the Social Security (Guardian's Allowances) Regulations (Northern Ireland) 1975(c) (children whose surviving parents are in prison or legal custody) shall be amended in accordance with paragraphs (2) to (6).

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Subject to the following provisions of this regulation, the circumstances in which a person is to be treated for the purposes of section 77(2)(c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as being in prison are that he is—

- (a) serving a custodial sentence within the meaning of Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996(d) of not less than 2 years; or
- (b) detained in a hospital by order of the court under Article 44, 45, 50A or 51(2) and (3) of the Mental Health (Northern Ireland)

(a) 1992 c. 7
(b) See Article 8(b) of S.R. 1999 No. 481
(c) S.R. 1975 No. 98; relevant amending regulations are S.R. 1977 No. 73
(d) S.I. 1996/3160 (N.I. 24); the definition of “custodial sentence” was amended by paragraph 51(b) of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))

Order 1986(a) or section 11 or 13(5A) and (6) of the Criminal Appeal (Northern Ireland) Act 1980(b).”.

- (3) In paragraph (2)—
- (a) for “5” in both places where it occurs there shall be substituted “2” and for “paragraph (1)” there shall be substituted “paragraph (1)(a)”;
- (b) in sub-paragraph (c) for “a sentence of imprisonment” there shall be substituted “a custodial sentence as referred to in paragraph (1)(a) of this regulation”.
- (4) For paragraph (3) there shall be substituted the following paragraph—
- “(3) Subject to paragraph (4) of this regulation, a person shall be treated as—
- (a) not having ceased to be serving such a custodial sentence as is referred to in paragraph (1)(a) of this regulation if he is transferred to a hospital or is temporarily released or is unlawfully at large; or
- (b) not having ceased to be detained in such circumstances as are referred to in paragraph (1)(b) of this regulation if he is temporarily released or is unlawfully at large.”.
- (5) In paragraph (4)—
- (a) for “such a sentence or to be in such custody as is referred to in paragraph (1)” there shall be substituted “such a custodial sentence as is referred to in paragraph (1)(a)”;
- (b) in sub-paragraph (a) for “5” there shall be substituted “2”.
- (6) In paragraph (9) for “5” there shall be substituted “2”.

Sealed with the Official Seal of the Department for Social Development on 7th March 2002.

(L.S.) *John O’Neill*
Senior Officer of the Department for Social Development

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- (a) S.I. 1986/595 (N.I. 4); Article 44 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2)) and paragraph 25 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998; Article 50A was inserted by Article 51(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) and amended by paragraph 26 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998; and Article 51(2) and (3) was amended by Article 51(2) of the Criminal Justice (Northern Ireland) Order 1996
- (b) 1980 c. 47; sections 11 and 13 were amended respectively by Part I of Schedule 5 to the Mental Health (Northern Ireland) Order 1986 and paragraphs 5 and 6 of Schedule 5 to the Criminal Justice (Northern Ireland) Order 1996

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Social Security (Guardian's Allowances) Regulations (Northern Ireland) 1975 in relation to the circumstances in which a person is to be treated as being in prison for the purposes of section 77(2)(c) of the Social Security Contributions and Benefits Act (Northern Ireland) 1992 by—

reducing the minimum length of custodial sentence from five to two years; and

including persons who are ordered by a court to be detained in a hospital under the Mental Health (Northern Ireland) Order 1986 or the Criminal Appeal (Northern Ireland) Act 1980 following conviction or following a verdict of not guilty by reason of insanity or a finding that the accused was under a disability.

The Regulations also make some minor consequential amendments.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

These Regulations do not impose any charge on business.

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