

**1975 No. 515**

**SOCIAL SECURITY**

**The Social Security (Guardian's Allowances)  
Regulations 1975**

<i>Made</i> - - - -	<i>25th March 1975</i>
<i>Laid before Parliament</i>	<i>27th March 1975</i>
<i>Coming into Operation</i>	<i>6th April 1975</i>

The Secretary of State for Social Services, in exercise of powers conferred by sections 38(3) and (4) and 162(a) of the Social Security Act 1975(a) and section 2 of, and paragraph 3 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(b) and of all other powers enabling her in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee since it appears to her that by reason of urgency it is inexpedient to do so, hereby makes the following regulations:

**Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Social Security (Guardian's Allowances) Regulations 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 Act 1975;

▶ "the determining authority" means, as the case may require, the Secretary of State, an appeal tribunal constituted under section 7 of the Social Security Act 1998, the Chief or any other Social Security Commissioner, or a tribunal consisting of any three or more such Commissioners constituted in accordance with section 16(7) of that Act;◀

Defn. of "the determining authority" substituted by Sch. 2 to S.I. 1999/1958 as from 4.7.99.

(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 these regulations as they apply for the purposes of the interpretation of an Act of Parliament.



Reg. 1A omitted by reg. 3 of S.I. 2000/1082 as from 15.5.00.

---

(a) 1975 c. 14.  
(b) 1975 c. 18.  
(c) 1889 c. 63.

**Regs. 2-4**

Reg. substituted by reg. 2 of S.I. 1985/1327 as from 23.9.85.

**►Adopted children**

2.—(1) Subject to paragraph (3) below, this regulation applies in cases 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 an overseas adoption within the meaning of section 4(3) of the Adoption Act 1968(a).

(2) In a case to which this regulation applies section 38(2) of the Act (circumstances in which guardian's allowance may be payable) shall be modified so that—

- (a) in the case of a child adopted by two spouses jointly, references to the child's parents are read as references to those spouses; and
- (b) in the case of a child adopted by one person only, for the circumstances mentioned in that subsection there is substituted the circumstance that that person is dead.

(3) Where a person adopts a child and, immediately before the adoption, he is entitled to guardian's allowance in respect of that child then, for the purpose of determining his entitlement to that allowance for any continuous period immediately following the adoption, this regulation shall not apply and, notwithstanding any provision of paragraph 3 of Schedule 1 to the Children Act 1975(b) (status conferred by adoption), any reference in section 38(2) of the Act to a child's parents shall be construed as a reference to the person or persons by reference to whose death, unknown whereabouts or imprisonment entitlement to the allowance was established.◄

**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 subsection.

(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 subsection, 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 neither—

- (a) an order of a court granting custody of the child to that other parent or imposing any liability on him for the child's maintenance; nor
- (b) a maintenance ►calculation◄ as defined in section 54 of the Child Support Act 1991(c) in force in respect of that other parent and the child,

then section 77(2) of the Social Security Contributions and Benefits Act 1992◄ 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.

---

(a) 1968 c. 53.

(b) 1975 c. 72.

(c) 1991 c. 48.

Words in reg. 4(1) substituted by reg. 2 of S.I. 1998/811 as from 31.8.98.

Word substituted in reg. 4(1)(b) by reg. 5 of S.I. 2001/158 as from the date on which S.I. of the Child Support, Pensions and Social Security Act 2000 comes into force in relation to that case.

**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 77(2)(c) of the Social Security Contributions and Benefits Act 1992 as being in prison are that he is—

- (a) serving a custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000(a) or a sentence of detention or imprisonment within the meaning of section 307(1) of the Criminal Procedure (Scotland) Act 1995(b), of not less than 2 years; or
- (b) detained in a hospital by order of the court under section 37(1), 38 or 45A of the Mental Health Act 1983 (c), section 5 of the Criminal Procedure (Insanity) Act 1964(d), section 6 or 14 of the Criminal Appeal Act 1968(e) or section 57, 58 or 59A(f) of the Criminal Procedure (Scotland) Act 1995.◀

Paras. (1) & (3) substituted & words in paras. (2) & (4) of reg. (5) substituted by reg. 2(2) - (5) of S.I. 2002/492 from 1.4.02.

(2) For the purpose only of calculating the period of ▶2◀ years referred to in ▶paragraph (1)(a)◀, (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 custodial sentence or a sentence of detention or imprisonment as is referred to in paragraph 1(a)◀, 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 ▶2◀ 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—

- (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.◀

(4) A person shall be treated as having ceased to be serving such a ▶such a custodial sentence as is referred to in paragraph 1(a)◀ 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 ▶2◀ years, or his conviction is quashed on appeal; or

---

(a) 2000 c. 6.

(b) 1995 c. 46.

(c) 1983 c. 20. Section 37 was amended by the Crime (Sentences) Act 1997 (c. 43) and the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). Section 38 was amended and section 45A was inserted by the Crime (Sentences) Act 1997.

(d) 1964 c. 84. Section 5 was substituted by section 3 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25).

(e) 1968 c. 19. Sections 6 and 14 were substituted by section 4 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.

(f) 1995 c. 46. Section 59A was inserted by section 6(1) of the Crime and Punishment (Scotland) Act 1997 (c. 48).

## Regs. 5-6

- (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.

[Regulation 5(5) revoked by regulation 22 of and Schedule to S.I. 1977/342 as from 4.4.77.]

(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;

[Sub-paragraph (b) revoked by regulation 22 of and Schedule to S.I. 1977/342 as from 4.4.77.]

(8) A surviving parent to whom paragraph (1) of this regulation applies shall, on notice being given of his ability by the Secretary of State, 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 Great Britain, this regulation shall apply, subject to the necessary modifications, only where he is serving a sentence of imprisonment of not less than 2 years or of imprisonment for life.

Figure in para. 9 substituted by reg. 2(6) of S.I. 2002/492 as from 1.4.02.

Paras. substituted by reg. 9(3) of S.I. 1977/342 as from 4.4.77.

### 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 are that—

- (a) one at least of the child's parents was born in the United Kingdom; or  
 (b) at the date of death of the parent (or other person) whose death gives rise to the claim for guardian's allowance, one at least of the child's parents had been present in Great Britain for at least 52 weeks in the aggregate out of any period of 2 years after attaining age 16.

(2) For the purposes of paragraph (1)(b) notwithstanding that on any day a person was absent from Great Britain he shall be treated as though he had been present in Great Britain if his absence was by reason only of the fact that on that day—

- (a) he was abroad in his capacity as—  
 (i) a serving member of the forces within the meaning of the definition of 'serving member of the forces' in regulation 1(2) of the Social Security (Contributions) Regulations 1975(a), as amended(b), or  
 (ii) an airman or mariner within the meaning of regulation 72 and regulation 77 respectively of those Regulations; or

(a) S.I. 1975/492 (1975 I. p. 1516).

(b) The relevant amending instruments are S.I. 1975/1855, 1976/1, 507 (1975 III, p. 6983; 1976 I, p. 1480).

(b) he was in prescribed employment in connection with continental shelf operations within the meaning of regulation 76 of those Regulations.◀

(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.

▶<sup>1</sup>Prescribed manner of making an election under section 38 of the Act

**6A.** An election under section 38(5) of the Act (payment of a guardian's allowance to either husband or wife unless she elects in the prescribed manner that payment is not to be made to him) shall be made by giving notice in writing to the Secretary of State at an office of the ▶<sup>2</sup>Department of Social Security◀ on a form approved by the Secretary of State or in such other manner, being in writing, as he may accept as sufficient in the circumstances of any particular case or class of cases.◀

<sup>1</sup>Reg. inserted by reg. 9(4) of S.I. 1977/342 as from 4.4.77.

<sup>2</sup>Words in reg. 6A substituted by virtue of art. 3(4) of S.I. 1988/1843 as from 28.11.88.

▶<sup>3</sup>Electronic elections

**6B.** A person may give any election which is required or may be given under regulation 6A above by means of an electronic communication in accordance with provisions set out in Schedule 9C to Social Security (Claims and Payments) Regulations 1987 (electronic communication).◀

<sup>3</sup>Reg. 6B inserted by reg. 7 of S.I. 2002/1789 as from 28.10.02.

**Transitional provisions**

**7.—(1)** Where guardian's allowance under the National Insurance Act 1965(a) 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 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 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 1965.

25th March 1975

*Barbara Castle*  
Secretary of State for Social Services

(a) 1965 c. 51.

**EXPLANATORY NOTE**

*(This Note is not part of the Regulations.)*

These Regulations contain provisions relating to guardian's allowance under the Social Security 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 Great Britain which must have been satisfied by at least one of the child's parents. They also contain transitional provisions.