STATUTORY INSTRUMENTS

1973 No. 1078

SOCIAL SECURITY

The National Insurance (Guardian's Allowances) Regulations 1973

Made - - -	*20th June* 1973
Laid before Parliament	*27th June* 1973
Coming into Operation	*19th July* 1973

The National Insurance Joint Authority, in exercise of powers conferred by section 29(2) of the National Insurance Act 1965(**a**), and now vested in them(**b**), and the Secretary of State for Social Services, in exercise of powers conferred by sections 29(3) and 113(2) of that Act, which powers are now vested in him(**c**), in each case in exercise of all other powers enabling them in that behalf, and for the purpose only of consolidating the regulations hereby revoked, hereby make the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Guardian's Allowances) Regulations 1973 and shall come into operation on 19th July 1973.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the National Insurance Act 1965;

"the determining authority" means, as the case may require, the Chief National Insurance Commissioner appointed under section 9 of the National Insurance Act 1966(**d**) and any other National Insurance Commissioner so appointed or any tribunal constituted under subsection (3) of that section, a local tribunal constituted under section 77 of the Act or an insurance officer appointed under section 68(1) of the Act;

"British Islands" means the United Kingdom, the Channel Islands and the Isle of Man;

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

(3) References in these regulations to any enactment or regulation shall include references to such enactment or regulation as amended or extended by any subsequent enactment, order or regulation and as including references to any enactment or regulation thereby consolidated.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**e**) shall apply in relation to this instrument (including any instrument read as one therewith) and in relation to any revocation effected

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(**a**) 1965 c. 51.
(**b**) *See* S.I. 1948/211 (Rev. XVI, p. 367: 1948 I, p. 2905) and sections 104(4)(b) and 117(1) of the National Insurance Act 1965 (c. 51).
(**c**) *See* Ministry of Social Security Act 1966 (c. 20) and S.I. 1968/1699 (1968 III, p. 4585).
(**d**) 1966 c. 6.
(**e**) 1889 c. 63.

by it as if this instrument, the regulations revoked by it and any regulations revoked by the regulations so revoked were Acts of Parliament, and as if each revocation were a repeal.

Adopted children

2. Subject to the provisions of regulation 8 of these regulations, where a child has been adopted in pursuance of an order made in the British Islands or is the subject of an overseas adoption within the meaning of section 4 of the Adoption Act 1968(**a**), there shall be substituted for the condition contained in section 29(1)(*a*) of the Act that the parents of the child are dead that condition set out below which is appropriate to the circumstances of the case, namely—

(*a*) if the child was adopted by a person who was not married at the date of the adoption, the condition that that person is dead; or

(*b*) if the child was adopted by two spouses jointly, the condition that both of those spouses are dead; or

(*c*) if the child was adopted by one of two spouses with or without the consent of the other, the condition that the spouse who adopted the child is dead.

Illegitimate children

3. Subject as aforesaid, where a child (other than a child to whom the preceding regulation applies) is illegitimate, there shall be substituted for the said condition that the parents of the child are dead that condition set out below which is appropriate to the circumstances of the case, namely—

(*a*) if any person has been found by a court of competent jurisdiction to be the father of the child, or if there is no such finding but in the opinion of the determining authority the paternity of the child has been admitted or established, the condition that the father and the mother of the child are dead; or

(*b*) in any other case, the condition that the mother is dead.

Children of divorced persons, etc.

4.—(1) Subject as aforesaid, 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 imposing any liability for custody or maintenance of the child on the other parent, there shall be substituted for the said condition that the parents of the child are dead the condition that one parent is dead.

(2) In the application of this regulation, the expression "parents" shall include persons who adopt children in the circumstances specified in regulation 2 of these regulations.

(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 parents' whereabouts are unknown

5.—(1) Subject as aforesaid, where one of the child's parents is dead and the person claiming the guardian's allowance shows that he was at the date of the

(**a**) 1968 c. 53.

death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent, there shall be substituted for the said condition that the parents of the child are dead the condition that one of the parents is dead.

(2) For the purposes of this regulation, the provisions of regulation 4(2) of these regulations shall apply.

Children whose surviving parents are in prison or legal custody

6.—(1) Subject to the following provisions of this regulation and to the provisions of regulation 8 of these regulations, where one of a child's parents is dead and the survivor of them 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, any guardian's allowance which would be payable in respect of the child if both his parents were dead shall be payable as if they were dead.

(2) For the purposes of this regulation, in relation to any sentence of imprisonment—

(*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.

(3) A guardian's allowance awarded by virtue of the provisions of this regulation shall not be payable for any period after the surviving parent has ceased to be serving such a sentence of imprisonment or to be in such legal custody as is referred to in paragraph (1) of this regulation.

(4) Subject to the provisions of the next following paragraph, a person shall be deemed not to have 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.

(5) A person shall be deemed to have ceased to be serving such a sentence as is referred to in paragraph (1) of this regulation if—

(*a*) 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; or

(*b*) he is released on licence or the remainder of his sentence is remitted:

Provided 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 time of his return.

(6) Where the sentence (or the conviction by virtue of which it is imposed) or order for custody referred to in paragraph (1) of this regulation is subject to a right of appeal or a right to apply for leave to appeal, no award of a guardian's allowance in respect thereof by virtue of the provisions of this regulation shall be made until the time limited for the making of that appeal or application has expired, or, if such an appeal is made, until the appeal has been adjudicated upon or withdrawn, and no benefit shall be payable by virtue of such an award in respect of any period before the earliest date on which that award could have been made.

(7) 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.

(8) 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:

Provided that for this purpose—

(*a*) if the surviving parent normally so contributes at the weekly rate specified in column 2 of Part I of Schedule 3 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 18(2) of the Family Allowances Act 1965(**a**) shall apply as they apply for the purpose of that Act.

(9) The Secretary of State may require repayment to the National Insurance Fund by a surviving parent to whom paragraph (1) of this regulation applies of any sums paid in respect of guardian's allowance due in accordance with the provisions of this regulation in respect of a child of that parent.

(10) In a case for which the conditions for payment of guardian's allowance are modified by the foregoing provisions of these regulations so as to make guardian's allowance payable in respect of a child not on the death of a child's parents but on the death of two persons who are not the child's parents, or of whom one is not the child's parent, this regulation shall apply as if those persons were the child's parents.

(11) This regulation shall apply, subject to the necessary modifications, in relation to surviving parents outside Great Britain only where they are serving a sentence of imprisonment of not less than 5 years or of imprisonment for life.

Insurance condition

7. Except in relation to regulation 4 or regulation 5 of these regulations, there shall be substituted for the condition contained in section 29(1)(*b*) of the Act that one at least of the parents of the child was an insured person, the condition that the person or, as the case may be, one at least of the persons to whom the appropriate substituted condition contained in these regulations is applicable, was an insured person.

Special saving

8. Notwithstanding anything contained in these regulations, the parent of a child shall not be entitled to a guardian's allowance in respect of that child.

(**a**) 1965 c. 53.

Revocations and transitional provisions

9.—(1) The regulations specified in column (1) of the Schedule to these regulations are hereby revoked to the extent mentioned in column (3) of that Schedule.

(2) Anything whatsoever done under or by virtue of any regulation revoked by these regulations shall be deemed to have been done under or by virtue of the corresponding provision of these regulations, and anything whatsoever begun under any such regulation may be continued under these regulations as if begun under these regulations.

(3) Nothing in paragraphs (1)-(2) of this regulation shall be taken as affecting the general application by regulation 1(4) of these regulations of the rules for the construction of Acts of Parliament contained in section 38 of the Interpretation Act 1889 (effect of repeal) with regard to the effect of revocations.

Given under the official seal of the National Insurance Joint Authority.

(L.S.)

Keith Joseph,
Secretary of State for Social Services,
a member of the National Insurance
Joint Authority.

20th June 1973.

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Secretary of State for Social Services.

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Regulation 9(1) SCHEDULE

Regulations revoked (1)	Reference (2)	Extent of revocation (3)
The National Insurance (Guardian's Allowances) Regulations 1948	S.I. 1948/2687 (Rev. XVI, p. 189: 1948 I, p. 2781)	The whole regulations
The National Insurance (Guardian's Allowances) Amendment Regulations 1957	S.I. 1957/1830 (1957 I, p. 1542)	The whole regulations
The National Insurance (Guardian's Allowances) Amendment Regulations 1962	S.I. 1962/1270 (1962 II, p. 1373)	The whole regulations
The National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations 1965	S.I. 1965/40 (1965 I, p. 47)	The entry in Schedule L under the heading "The National Insurance (Guardian's Allowances) Regulations 1948"

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate the National Insurance (Guardian's Allowances) Regulations 1948 with subsequent amending Regulations. They are made for the purpose only of consolidation and accordingly, by virtue of section 108(9)(*c*) of the National Insurance Act 1965, have not been referred to the National Insurance Advisory Committee.

Regulation 1 contains various definitions; regulations 2, 3, 4, 5 and 6 provide substitute conditions for the condition in section 29(1)(*a*) of the National Insurance Act 1965 (that the parents of a child are dead) in respect of adopted children, illegitimate children, children of divorced persons, children whose parents' whereabouts are unknown and children whose surviving parents are in prison or legal custody; regulation 7 modifies the insurance condition contained in section 29(1)(*b*) of the 1965 Act; regulation 8 provides that a parent of a child shall not be entitled to a guardian's allowance in respect of that child; and regulation 9 and the Schedule contain revocation and transitional provisions.

SI 1973/1078
ISBN 0-11-031078-0

