1973. No. 261 [C]

NATIONAL INSURANCE

Guardian's Allowances

REGULATIONS, DATED 30TH JULY 1973, MADE BY THE NATIONAL INSURANCE JOINT AUTHORITY AND THE MINISTRY OF HEALTH AND SOCIAL SERVICES UNDER THE NATIONAL INSURANCE ACT (NORTHERN IRELAND) 1966.

The National Insurance Joint Authority, in exercise of powers conferred by section 28(2) of the National Insurance Act (Northern Ireland) 1966(a), and the Ministry of Health and Social Services on behalf of the Secretary of State, in exercise of powers conferred by sections 28(3) and 105 of that Act, and in exercise of all other powers enabling them in that behalf, hereby make the following regulations being regulations subject to negative resolution in accordance with section 101(3) of the said Act:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Guardian's Allowances) Regulations (Northern Ireland) 1973 and shall come into operation on 20th August 1973.

(2) In these regulations—

"the Act" means the National Insurance Act (Northern Ireland) 1966;

"the determining authority" means, as the case may require, an insurance officer appointed under section 67 of the Act or a local tribunal constituted under section 76 of that Act or the Commissioner;

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

Adopted children

2. Subject to the provisions of regulation 8, where a child has been adopted in pursuance of an adoption order made in the British Islands or is the subject of a foreign adoption within the meaning of section 4 of the Adoption (Hague Convention) Act (Northern Ireland) 1969(b), there shall be substituted for the condition contained in section 28(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.

(a) 1966. c. 6 (N.I.). (b) 1969. c. 22 (N.I.).

Illegitimate children

3. Subject as aforesaid, where a child (other than a child to whom regulation 2 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.

(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 a child's parents is dead and the person claiming the guardian's allowance shows that he was at the date of the 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) shall apply.

Children whose surviving parents are in prison or detained under a hospital order

6.—(1) Subject to the following provisions of this regulation and to the provisions of regulation 8, 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 a person in respect of whom an order has been made under section 56 or a direction has been issued under section 57 of the Mental Health Act (Northern Ireland) 1961(**c**), 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—

(c) 1961. c. 15.

(*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 as is referred to in paragraph (1) or to be a person in respect of whom such an order or a direction as is referred to in that paragraph applies.

(4) Subject to the provisions of paragraph (5) a person shall be deemed not to have ceased—

(*a*) to be serving such a sentence as is referred to in paragraph (1); or

(*b*) to be detained in a hospital under such an order or direction as is referred to in paragraph (1),

if, as the case may be, 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) 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), order or direction referred to in paragraph (1) 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 of guardian's allowance specified in 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 17(2) of the Family Allowances Act (Northern Ireland) 1966(**d**) shall apply as they apply for the purpose of that Act.

(9) The Ministry may require repayment to the National Insurance Fund by a surviving parent to whom paragraph (1) 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 Northern Ireland 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, there shall be substituted for the condition contained in section 28(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.

Revocations

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

(**d**) 1966. c. 8 (N.I.).

Given under the Official Seal of the National Insurance Joint Authority this 30th day of July 1973.

(L.S.) *D. S. Beaumont,*
Secretary.

Given under the Official Seal of the Ministry of Health and Social Services for Northern Ireland this 30th day of July 1973.

(L.S.) *C. G. Oakes,*
Assistant Secretary.

SCHEDULE Regulation 9

Regulations Revoked

Statutory Rules and Orders of Northern Ireland (1)	*Citation* (2)	*Extent of revocation* (3)
S.R. & O. (N.I.) 1948, No. 235	The National Insurance (Guardian's Allowances) Regulations (Northern Ireland) 1948	The whole regulations
S.R. & O. (N.I.) 1957, No. 242	The National Insurance (Guardian's Allowances) Amendment Regulations (Northern Ireland) 1957	The whole regulations
S.R. & O. (N.I.) 1962, No. 113	The National Insurance (Guardian's Allowances) Amendment Regulations (Northern Ireland) 1962	The whole regulations
S.R. & O. (N.I.) 1965, No. 11	The National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations (Northern Ireland) 1965	In Schedule K, the entry relating to the National Insurance (Guardian's Allowances) Regulations (Northern Ireland) 1948

EXPLANATORY NOTE

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

These regulations consolidate the National Insurance (Guardian's Allowances) Regulations (Northern Ireland) 1948 and the subsequent amending regulations set out in the Schedule which are revoked to the extent shown in that Schedule by regulation 9.

Regulation 6(4) introduces a provision to ensure that Guardian's Allowance will continue in payment when a person detained in a hospital as a result of an order under section 56 or direction under section 57 of the Mental Health Act (Northern Ireland) 1961, is transferred to another hospital or is temporarily released or is unlawfully at large.

Regulation 6(6) introduces a provision to ensure that where an order under section 56 or direction under section 57 of the Mental Health Act (Northern Ireland) 1961, is subject to a right of appeal or right to apply for leave to appeal, no award of guardian's allowance shall be made until the appeal has been decided or time limit for the making of the appeal has expired.

No other amendments other than those of a drafting nature have been made.