
STATUTORY INSTRUMENTS

1982 No. 1408

The Social Security (General Benefit) Regulations 1982

PART I

GENERAL

Exceptions from disqualification for imprisonment etc

2.—(1) The following provisions of this regulation shall have effect to except benefit from the operation of section 82(5)(b) of the Act which provides that (except where regulations otherwise provide) a person shall be disqualified for receiving any benefit and an increase of benefit shall not be payable in respect of any person as the beneficiary's [^{F1}spouse or civil partner], for any period during which that person is undergoing imprisonment or detention in legal custody (hereinafter in this regulation referred to as "the said provisions").

(2) The said provisions shall not operate to disqualify a person for receiving [^{F2}incapacity benefit], [^{F3}attendance allowance, disability living allowance], widow's benefit, [^{F4}widowed parent's allowance], child's special allowance, maternity allowance, [^{F5}a shared additional pension,] retirement pension of any category, age addition, [^{F6}severe disablement allowance]^{F7}... disablement benefit, [^{F8}reduced earnings allowance, retirement allowance] or industrial death benefit or to make an increase of benefit not payable in respect of a person as the beneficiary's [^{F9}spouse or civil partner], for any period during which that person is undergoing imprisonment or detention in legal custody in connection with a charge brought or intended to be brought against him in criminal proceedings, or pursuant to any sentence or order for detention made by a court in such proceedings, unless, in relation to him, a penalty is imposed at the conclusion of those proceedings or, in the case of default of payment of a sum adjudged to be paid on conviction, a penalty is imposed in respect of such default.

(3) The said provisions shall not operate to disqualify a person for receiving any benefit (not being a guardian's allowance or death grant), or to make an increase of benefit not payable in respect of a person as the beneficiary's [^{F10}spouse or civil partner], for any period during which that person [^{F11}("P")] is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which [^{F12}P is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless P satisfies either of the following conditions.]

[^{F13}(a) he is detained or liable to be detained under section 45A of the Mental Health Act 1983 (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or]

[^{F13}(b) he is detained or liable to be detained under section 47 of the Mental Health Act 1983 (removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder).]

[^{F14}(4) The first condition is that—

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- (a) P is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.); and
- (b) in any case where there is in relation to P a release date within the meaning of section 50(3) of that Act, P is being detained on or before the day which the Secretary of State certifies to be that release date.

(4A) The second condition is that P is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).]

(5) The said provisions shall not operate to disqualify a person for receiving a guardian's allowance or death grant.

[^{F15}(6) Subject to paragraph (7), the said provisions shall not operate to disqualify a person for receiving disablement benefit, other than any increase of that benefit, for any period during which he is undergoing imprisonment or detention in legal custody.]

(7) The amount payable by virtue of the last preceding paragraph by way of any disablement pension or pensions in respect of any period, other than a period in respect of which that person is excepted from disqualification by virtue of the provisions of paragraph (3) of this regulation, during which that person is and has continuously been undergoing imprisonment or detention in legal custody, shall not exceed the total amount payable by way of such pension or all such pensions for a period of one year.

(8) For the purposes of this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884 applies [^{F16}or the Court Martial, or the Court Martial Appeal Court];
- (b) “hospital or similar institution” means any place (not being a prison, a detention centre, a Borstal institution, a young offenders institution or a remand centre, and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (c) “penalty” means a sentence of imprisonment, Borstal training or detention under section 53 of the Children and Young Persons Act 1933 or under 1937 c. 37 section 57(3) of the Children and Young Persons (Scotland) Act 1937 or under section 208(3) and 416(4) of the Criminal Proceedings (Scotland) Act 1975 or an order for detention in a detention centre;
- (d) in relation to a person who is liable to be detained in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison shall be construed as including references to a prison within the meaning of that Act;

^{F17}(e)

^{F18}(f)

- (g) criminal proceedings against any person shall be deemed to be concluded upon his being found insane in those proceedings so that he cannot be tried or his trial cannot proceed.

(9) Where a person outside Great Britain is undergoing imprisonment or detention in legal custody and, in similar circumstances in Great Britain, he would have been excepted, by the operation of any of the preceding paragraphs of this regulation, from disqualification under the said provisions (referred to in paragraph (1)) for receiving the benefit claimed, he shall not be disqualified for receiving that benefit by reason only of his said imprisonment or detention.

(10) Paragraph (9) applies to increases of benefit not payable under the said provisions as it applies to disqualification for receiving benefit.

Textual Amendments

- F1** Words in reg. 2(1) substituted (5.12.2005) by The Social Security (Civil Partnership) (Consequential Amendments) Regulations 2005 (S.I. 2005/2878), regs. 1, **3(2)**
- F2** Words in reg. 2(2) substituted (13.4.1995) by The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995 (S.I. 1995/829), regs. 1(1), **16** (with Pt. III)
- F3** Words in reg. 2(2) substituted (6.4.1992) by The Disability Living Allowance and Disability Working Allowance (Consequential Provisions) Regulations 1991 (S.I. 1991/2742), regs. 1(1), **8(3)**
- F4** Words in reg. 2(2) substituted (coming into force in accordance with art. 1-3 of the amending S.I.) by The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) Order 2017 (S.I. 2017/422), arts. 1(2), **8(3)**
- F5** Words in reg. 2(2) inserted (6.7.2005) by The Social Security (Shared Additional Pension) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/1551), regs. 1(1)(a), **7(3)** (with reg. 10)
- F6** Words in reg. 2(2) substituted (29.11.1984) by The Social Security (Severe Disablement Allowance) Regulations 1984 (S.I. 1984/1303), regs. 1, 11, **Sch. 2**
- F7** Words in reg. 2(2) omitted (6.4.1983) by virtue of The Social Security (Abolition of Injury Benefit) (Consequential) Regulations 1983 (S.I. 1983/186), regs. 1(1), **13(2)**
- F8** Words in reg. 2(2) substituted (24.3.1996) by The Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/425), regs. 1, **4(a)**
- F9** Words in reg. 2(2) substituted (5.12.2005) by The Social Security (Civil Partnership) (Consequential Amendments) Regulations 2005 (S.I. 2005/2878), regs. 1, **3(2)**
- F10** Words in reg. 2(3) substituted (5.12.2005) by The Social Security (Civil Partnership) (Consequential Amendments) Regulations 2005 (S.I. 2005/2878), regs. 1, **3(2)**
- F11** Word in reg. 2(3) inserted (25.3.2010) by The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 (S.I. 2010/442), regs. 1, **2(2)(a)(i)**
- F12** Words in reg. 2(3) substituted (25.3.2010) by The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 (S.I. 2010/442), regs. 1, **2(2)(a)(ii)**
- F13** Reg. 2(3)(a)(b) substituted (10.4.2006 for specified purposes) by The Social Security (Hospital In-Patients) Regulations 2005 (S.I. 2005/3360), regs. 1(b), **3(a)**
- F14** Reg. 2(4)(4A) substituted for reg. 2(4) (25.3.2010) by The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 (S.I. 2010/442), regs. 1, **2(2)(b)**
- F15** Reg. 2(6) substituted (24.3.1996) by The Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/425), regs. 1, **4(b)**
- F16** Words in reg. 2(8)(a) substituted (31.10.2009) by The Armed Forces Act 2006 (Consequential Amendments) Order 2009 (S.I. 2009/2054), art. 1(2), **Sch. 1 para. 9** (with Sch. 2 para. 5)
- F17** Reg. 2(8)(e) omitted (10.4.2006 for specified purposes) by virtue of The Social Security (Hospital In-Patients) Regulations 2005 (S.I. 2005/3360), regs. 1(b), **3(c)**
- F18** Reg. 2(8)(f) omitted (10.4.2006 for specified purposes) by virtue of The Social Security (Hospital In-Patients) Regulations 2005 (S.I. 2005/3360), regs. 1(b), **3(c)**

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