

**2002 No. 492**

**SOCIAL SECURITY**

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

|                               |                       |
|-------------------------------|-----------------------|
| <i>Made - - - -</i>           | <i>5th March 2002</i> |
| <i>Laid before Parliament</i> | <i>8th March 2002</i> |
| <i>Coming into force</i>      | <i>1st April 2002</i> |

The Secretary of State for Works and Pensions, in exercise of the powers conferred upon him by sections 77(8)(b), 122(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(b), hereby makes the following Regulations:

**Citation and commencement**

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

**Amendment of the Social Security (Guardian's Allowances) Regulations 1975**

2.—(1) Regulation 5 of the Social Security (Guardian's Allowances) Regulations 1975(c) (children whose surviving parents are in prison or legal custody) shall be amended in accordance with the following provisions of this regulation.

(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 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(d), or a sentence of detention or imprisonment within the meaning of section 307(1) of the Criminal Procedure (Scotland) Act 1995(e), of not less than 2 years; or

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(a) 1992 c. 4; section 122(1) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.  
(b) See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).  
(c) S.I. 1975/515. Regulation 5 was amended by S.I. 1977/342.  
(d) 2000 c. 6.  
(e) 1995 c. 46.

(b) detained in a hospital by order of the court under section 37(1), 38 or 45A of the Mental Health Act 1983(a), section 5 of the Criminal Procedure (Insanity) Act 1964(b), section 6 or 14 of the Criminal Appeal Act 1968(c) or section 57, 58 or 59A(d) of the Criminal Procedure (Scotland) Act 1995.”.

(3) In paragraph (2)—

- (a) for the figure “5”, in both places where it occurs, there shall be substituted the figure “2”;
- (b) for the words “paragraph (1)” there shall be substituted the words “paragraph (1)(a)”; and
- (c) in sub-paragraph (c), for the words “a sentence of imprisonment” there shall be substituted “a custodial sentence or a sentence of detention or imprisonment as are referred to in paragraph (1)(a)”.

(4) For paragraph (3) there shall be substituted the following paragraph—

“(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.”.

(5) In paragraph (4)—

- (a) for the words “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)”; and
- (b) in sub-paragraph (a), for the figure “5” there shall be substituted the figure “2”.

(6) In paragraph (9), for the figure “5” there shall be substituted the figure “2”.

Signed by authority of the Secretary of State for Work and Pensions.

5th March 2002

*P. Hollis*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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(a) 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.

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

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

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

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Social Security (Guardian's Allowances) Regulations 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 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 hospital—

under the Mental Health Act 1983 or the Criminal Procedure (Scotland) Act 1995 following conviction;

under the Criminal Procedure (Insanity) Act 1964 or the Criminal Appeal Act 1968 following a verdict of not guilty by reason of insanity or a finding that the accused was under a disability; or

under the Criminal Procedure (Scotland) Act 1995 following an acquittal on the grounds of insanity or a finding of insanity.

The Regulations also make some consequential amendments.

These Regulations do not impose any charge on business.

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