

2010 No. 442

SOCIAL SECURITY

**The Social Security (Persons Serving a Sentence of
Imprisonment Detained in Hospital) Regulations 2010**

<i>Made</i>	- - - -	<i>23rd February 2010</i>
<i>Laid before Parliament</i>		<i>1st March 2010</i>
<i>Coming into force</i>	- -	<i>25th March 2010</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1)(b), 123(1)(a), 135(1) and (2), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 2(3), (6) and (9) and 17(1) of the State Pension Credit Act 2002(b) and sections 2(1)(a), 4(2) and (3), 18(4)(b), 24(1) and 25(2), (3) and (5) of the Welfare Reform Act 2007(c).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(d).

Citation and commencement

1. These Regulations may be cited as the Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 and shall come into force on 25th March 2010.

Amendment of the Social Security (General Benefit) Regulations 1982

2.—(1) The Social Security (General Benefit) Regulations 1982(e) are amended as follows.

(2) In regulation 2 (exceptions from disqualification for imprisonment etc.)—

(a) in paragraph (3)(f)—

(i) after “that person” insert “(“P”);

(ii) for the words beginning “he is liable to be detained in a hospital” to the end of the paragraph substitute “P is detained in a hospital or similar institution in Great Britain

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- (a) 1992 c.4. Section 113(1) was amended by the Civil Partnership Act 2004 (c.33), Schedule 24, Part 3, paragraph 38. Section 137(1) is an interpretation provision and is cited for the definition of “prescribed”. Section 175(1) and (4) were amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 29.
- (b) 2002 c.16. Section 17(1) is an interpretation provision and is cited for the definitions of “prescribed” and “regulations”. Section 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992 are applied to provisions of the State Pension Credit Act 2002 by section 19(1) of the State Pension Credit Act 2002.
- (c) 2007 c.5. Section 24(1) is an interpretation provision and is cited for the definitions of “prescribed” and “regulations”.
- (d) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c.5).
- (e) S.I. 1982/1408.
- (f) Paragraph (3) was amended by S.I. 2005/2878 and 2005/3360.

as a person suffering from mental disorder unless P satisfies either of the following conditions.”; and

(b) for paragraph (4)(a) substitute—

“(4) The first condition is that—

- (a) P is being detained under section 45A or 47 of the Mental Health Act 1983(b) (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(c), 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(d) (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003(e) (transfer of prisoners for treatment of mental disorder).”.

Amendment of the Income Support (General) Regulations 1987

3.—(1) The Income Support (General) Regulations 1987(f) are amended as follows.

(2) In regulation 21 (special cases) after paragraph (3)(g) insert—

“(3ZA) In Schedule 7 “person serving a sentence of imprisonment detained in hospital” means a person (“P”) who satisfies either of the following conditions.

(3ZB) The first condition is that—

- (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.

(3ZC) 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).”.

(3) In Schedule 7 (applicable amount in special cases), in column (1), for paragraph 2A(h) substitute—

“Persons serving a sentence of imprisonment detained in hospital

2A. A person serving a sentence of imprisonment detained in hospital.”.

(a) Paragraph (4) was amended by S.I. 2005/3360.

(b) 1983 c.20. Section 45A was inserted by the Crime (Sentences) Act 1997 (c.43), section 46 and amended by the Criminal Justice Act 2003 (c.44), Schedule 32, paragraph 39 and Schedule 37, Part 7 and the Mental Health Act 2007 (c.12) sections 4(6) and 10(8), Schedule 1, paragraph 9 and Schedule 11, Part 1. Section 47 was amended by the Crime (Sentences) Act 1997, section 49(3) and Schedule 6, the Domestic Violence, Crime and Victims Act 2004 (c.28), Schedule 10, paragraph 18, the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 97 and the Mental Health Act 2007, section 4(7), Schedule 1, paragraph 10 and Schedule 11, Part 1.

(c) Section 50(3) was substituted by the Criminal Justice Act 2003, section 294(3).

(d) 1995 c.46. Section 59A was substituted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 4, paragraph 8(6).

(e) 2003 asp 13.

(f) S.I. 1987/1967.

(g) Paragraph (3) was amended by S.I. 1995/516, 1998/563, 2000/636, 2005/445, 2005/2078, 2005/2687, 2005/2877, 2005/3360, 2006/1026. Paragraph (3A) was inserted by S.I. 1991/1656 and revoked by S.I. 2005/2687.

(h) Paragraph 2A was inserted by S.I. 1990/547 and substituted by S.I. 2005/3360.

Amendment of the State Pension Credit Regulations 2002

4.—(1) The State Pension Credit Regulations 2002(a) are amended as follows.

(2) In regulation 8 (special groups) for “patients” substitute “persons serving a sentence of imprisonment detained in hospital”.

(3) In Schedule 3 (special groups)—

(a) for the heading to paragraph 2 substitute—

“Persons serving a sentence of imprisonment detained in hospital”; and

(b) for paragraph 2(1)(b) substitute—

“(1) Sub-paragraph (2) applies in the case of a claimant (“C”) who satisfies either of the following conditions.

(1A) The first condition is that—

- (a) C 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 C a release date within the meaning of section 50(3) of that Act, C is being detained on or before the day which the Secretary of State certifies to be that release date.

(1B) The second condition is that C 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).”.

Amendment of the Employment and Support Allowance Regulations 2008

5.—(1) The Employment and Support Allowance Regulations 2008(c) are amended as follows.

(2) In regulation 69 (special cases) after paragraph (2) add—

“(3) In Schedule 5 “person serving a sentence of imprisonment detained in hospital” means a person (“P”) who satisfies either of the following conditions.

(4) The first condition is that—

- (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.

(5) 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).”.

(3) In regulation 160(d) (exceptions for disqualification for imprisonment)—

(a) in paragraph (3)—

(i) after the words “a claimant” insert “(“C”)”;

(a) S.I. 2002/1792.

(b) Paragraph 2 was substituted by S.I. 2005/3360 and amended by S.I. 2006/588.

(c) S.I. 2008/794.

(d) Regulation 160 was amended by S.I. 2008/2428.

- (ii) for the words “the claimant” (the first time they appear) substitute “C”;
- (iii) for the words beginning “the claimant is liable to be detained in a hospital” to the end of the paragraph substitute “C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the following conditions”; and
- (b) for paragraph (4) substitute—
 - “(4) The first condition is that—
 - (a) C 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 C a release date within the meaning of section 50(3) of that Act, C 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 C 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).”.
- (4) In Part 2 of Schedule 5 (special cases) in column (1)—
 - (a) for paragraph 12 and its heading substitute—

“Persons serving a sentence of imprisonment detained in hospital

- 12.** A person serving a sentence of imprisonment detained in hospital.”; and
- (b) before paragraph 13 insert the heading—

“Patients”.

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

23rd February 2010

Jim Knight
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend provisions in the Social Security (General Benefit) Regulations 1982, the Income Support (General) Regulations 1987, the State Pension Credit Regulations 2002 and the Employment and Support Allowance Regulations 2008 relating to persons serving sentences of imprisonment who are detained in hospital.

Regulation 3 amends paragraph 2A of Schedule 7 to the Income Support (General) Regulations 1987 so that the applicable amount is nil for a “person serving a sentence of imprisonment detained in hospital”. This term is defined in a new provision added to regulation 21 of those Regulations. In England and Wales the definition covers a person detained in a hospital under section 45A or 47 of the Mental Health Act 1983 on or before the date which the Secretary of State certifies is their “release date” within the meaning of section 50(3) of that Act (in cases where there is such a date). The effect of these amendments is that a person serving an indeterminate sentence will not receive income support until they are actually released from detention. This is because such persons do not have a “release date” within the meaning of section 50(3). In Scotland the definition covers a person who is detained under section 59A of the Criminal Procedure (Scotland) Act 1995 or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Regulation 2 amends regulation 2(3) and (4) of the Social Security (General Benefit) Regulations 1982, which already provide for a similar rule in relation to entitlement to benefits to which those Regulations apply, so as to bring the wording into line with that used in the Income Support Regulations.

Regulations 4 and 5 make equivalent amendments to the State Pension Credit Regulations 2002 and the Employment and Support Allowance Regulations 2008.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

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STATUTORY INSTRUMENTS

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