1975 No. 98

SOCIAL SECURITY

The Social Security (Guardian's Allowances) Regulations (Northern Ireland) 1975

Made . . . . . *4th April* 1975

Coming into operation . . . . *6th April* 1975

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 38(3) and (4) and 152(*a*) of the Social Security (Northern Ireland) Act 1975(**a**), and section 2 of, and paragraph 3 of Part I of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(**b**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Guardian's Allowances) Regulations (Northern Ireland) 1975 and shall come into operation on 6th April 1975.

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

"the Act" means the Social Security (Northern Ireland) Act 1975;

"determining authority" means, as the case may require, an insurance officer, a local tribunal or a Commissioner by whom the relevant question falls to be determined under Part III of the Act;

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

(3) Any reference in these regulations to any provision made by or contained in an enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision, which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**c**) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

Adopted children

2. Where a child has been adopted in pursuance of an order made in the United Kingdom, the Channel Islands or the Isle of Man or by a foreign adoption within the meaning of section 4 of the Adoption (Hague Convention) Act (Northern Ireland) 1969(**d**), section 38(2) of the Act (circumstances in which guardian's allowance may be payable) shall be modified so as to have effect—

(a) 1975 c. 15
(b) 1975 c. 18
(c) 1889 c. 63
(d) 1969 c. 22 (N.I.)

(*a*) in the case of a child adopted by two spouses jointly, as if the references to a child's parents were references to those spouses;

(*b*) in the case of a child adopted by one person only, as if the following circumstance were substituted for those in that section, namely that that person is dead.

Illegitimate children

3.—(1) Where a child (other than one to whom regulation 2 above applies) is illegitimate and—

(*a*) a person has been found by a court of competent jurisdiction to be the father of the child, or

(*b*) there is no such finding but in the opinion of the determining authority the paternity of the child has been admitted or established,

section 38(2) of the Act shall be modified so as to have effect as if the mother and father of the child were the child's parents within the meaning of that section.

(2) In the case of any illegitimate child (other than one to whom regulation 2 above or paragraph (1) of this regulation applies) the said section 38(2) shall be modified so as to have effect as if the following circumstance were substituted for those in that section, namely that the mother of the child is dead.

Children of divorced persons, etc.

4.—(1) 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 granting custody of the child to that other parent or imposing any liability on him for the child's maintenance, then section 38(2) of the Act shall be modified so as to have effect as if the circumstances in paragraph (*a*) were that one of the child's parents were dead and paragraphs (*b*) and (*c*) did not apply.

(2) In the case of a child to whom regulation 2(*a*) above applies paragraph (1) of this regulation shall have effect as if the child's parents were the spouses who adopted him.

(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 surviving parents are in prison or legal custody

5.—(1) Subject to the following provisions of this regulation, the circumstances in which a person is to be treated for the purposes of section 38(2)(*c*) of the Act as being in prison are that he 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.

(2) For the purpose only of calculating the period of 5 years referred to in paragraph (1), (4) or (9) of this regulation—