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STATUTORY RULES OF NORTHERN IRELAND

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**2010 No. 58**

**SOCIAL SECURITY**

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

*Made* - - - - *2nd March 2010*  
*Coming into operation* *25th March 2010*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 113(1)(b), 122(1)(a), 131(1) and (2) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1), and now vested in it(2), sections 2(3), (6) and (9) and 19(1) and (2) of the State Pension Credit Act (Northern Ireland) 2002(3) and sections 2(1)(a), 4(2) and (3), 18(4)(b) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007(4).

**Citation and commencement**

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

**Amendment of the Social Security (General Benefit) Regulations**

2. In regulation 2 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984(5) (exceptions from disqualification for imprisonment, etc.)—

(a) in paragraph (3)(6) for the words from “is undergoing detention in legal custody” to the end substitute—

“(“P”) is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which P is detained in a hospital or similar institution in Northern Ireland as a person suffering from a mental disorder unless—

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(1) 1992 c.7; section 113(1) was amended by paragraph 92 of Schedule 24 to the Civil Partnership Act 2003 (c. 33) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)  
(2) See Article 8(b) of S.R. 1999 No. 481  
(3) 2002 c. 14 (N.I.)  
(4) 2007 c. 2 (N.I.)  
(5) S.R. 1984 No. 92; relevant amending Regulations are S.R. 2005 No. 539  
(6) Paragraph (3) was amended by regulation 3 of S.R. 2005 No. 539

- (a) P is being detained under Article 53 of the Mental Health (Northern Ireland) Order 1986(7) (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 Article 56(3) of that Order(8) (further provisions as to prisoners under sentence), P is being detained on or before the day which the Secretary of State certifies to be that release date.”; and
- (b) omit paragraph (4).

### **Amendment of the Income Support (General) Regulations**

3.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(9) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 21(3) (special cases) after the definition “person from abroad”(10) insert—
  - ““person serving a sentence of imprisonment detained in hospital” means a person who—
  - (a) is being detained under Article 53 of Mental Health (Northern Ireland) Order 1986 (removal to hospital of persons serving sentences of imprisonment etc.), and
  - (b) in any case where there is in relation to that person a release date within the meaning of Article 56(3) of that Order (further provisions as to prisoners under sentence), is being detained on or before the day which the Secretary of State certifies to be that release date;”.
- (3) For paragraph 2A(11) of Schedule 7 (applicable amounts in special cases) substitute—

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#### **“Persons serving a sentence of imprisonment detained in hospital**

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

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### **Amendment of the State Pension Credit Regulations**

4.—(1) The State Pension Credit Regulations (Northern Ireland) 2003(12) are amended in accordance with paragraphs (2) and (3).

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

- (3) In paragraph 2 of Schedule 3(13) (special groups)—
  - (a) for the heading substitute—

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

- (b) for sub-paragraph (1) substitute—

“(1) Sub-paragraph (2) applies in the case of a claimant who—

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(7) S.I. 1986/595 (N.I. 4); Article 53 was amended by paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26)

(8) Article 56(3) was substituted by section 296(3) of the Criminal Justice Act 2003 (c. 44)

(9) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1990 No. 131, S.R. 2005 No. 580 and S.R. 2006 No. 178

(10) The definition of “person from abroad” was substituted by regulation 2(2)(a) of S.R. 2006 No. 178

(11) Paragraph 2A was inserted by regulation 19(b) of S.R. 1990 No. 131 and substituted by regulation 3(5)(b) of S.R. 2005 No. 580

(12) S.R. 2003 No. 28; relevant amending Regulations are S.R. 2005 No. 580 and S.R. 2006 No. 97

(13) Paragraph 2 was substituted by regulation 7(5) of S.R. 2005 No. 580 and amended by regulation 5(5) of S.R. 2006 No. 97

- (a) is being detained under Article 53 of Mental Health (Northern Ireland) Order 1986 (removal to hospital of persons serving sentences of imprisonment etc.), and
- (b) in any case where there is in relation to that claimant a release date within the meaning of Article 56(3) of that Order (further provisions as to prisoners under sentence), is being detained on or before the day which the Secretary of State certifies to be that release date.”.

### **Amendment of the Employment and Support Allowance Regulations**

5.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(14) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 69(2) (special cases) after the definition “person in hardship” insert—

““person serving a sentence of imprisonment detained in hospital” means a person who—

- (a) is being detained under Article 53 of Mental Health (Northern Ireland) Order 1986 (removal to hospital of persons serving sentences of imprisonment etc.), and
- (b) in any case where there is in relation to that person a release date within the meaning of Article 56(3) of that Order (further provisions as to prisoners under sentence), is being detained on or before the day which the Secretary of State certifies to be that release date;”.

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

(a) for paragraph (3) substitute—

“(3) Notwithstanding section 18(4)(b) of the Act, a claimant (“C”) is not to be disqualified for receiving a contributory allowance, for any period during which C is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which C is detained in a hospital or similar institution in Northern Ireland as a person suffering from mental disorder unless—

- (a) C is detained under Article 53 of Mental Health Order (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 Article 56(3) of that Order (further provisions as to prisoners under sentence), C is being detained on or before the day which the Secretary of State certifies to be that release date.”; and

(b) omit paragraph (4).

(4) In column (1) of Schedule 5 (special cases)—

(a) for paragraph 12 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—

*“Patients”.*

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## **Revocation**

6. Regulation 3(5)(b) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005(15) is revoked.

Sealed with the Official Seal of the Department for Social Development on 2nd March 2010

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Social  
Development

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## EXPLANATORY NOTE

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

These Regulations amend the Social Security (General Benefit) Regulations (Northern Ireland) 1984 (“the General Benefit Regulations”), the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the State Pension Credit Regulations (Northern Ireland) 2003 (“the State Pension Credit Regulations”) and Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”) relating to persons serving sentences of imprisonment who are detained in hospital.

Regulation 2 amends regulation 2 of the General Benefit Regulations to clarify that where a prisoner is detained in a hospital or similar institution under Article 53 of the Mental Health (Northern Ireland) Order 1986 on or before the date which the Secretary of State certifies is the prisoner’s release date within the meaning of Article 56(3) of that Order, in cases where there is such a date, that person is not exempt from disqualification of receipt of benefit and will not be able to receive benefit until actually released from detention.

Regulation 3 makes similar amendments to the Income Support Regulations and ensures that the applicable amount for a person serving a sentence of imprisonment detained in hospital is nil.

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

Regulation 6 makes a consequential revocation.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.