
STATUTORY INSTRUMENTS

1994 No. 1898

The Social Security (Incapacity for Work) (Northern Ireland) Order 1994

Test of incapacity for work

7. In the Contributions and Benefits Act, after section 167 insert—

“PART XIIA

INCAPACITY FOR WORK

Test of incapacity for work.

167A.—(1) For the purposes of this Act, save as otherwise expressly provided, whether a person is capable or incapable of work shall be determined in accordance with this Part of this Act.

(2) Regulations may make provision as to—

- (a) the information or evidence required for the purpose of determining whether a person is capable or incapable of work; and
- (b) the manner in which that information or evidence is to be provided;

and may provide that if a person without good cause fails to provide that information or evidence, or to do so in the manner required, he shall be treated as capable of work.

(3) Regulations may provide that in any case where a question arises as to whether a person is capable of work—

- (a) he may be called to attend for such medical examination as may be required in accordance with regulations; and
- (b) if he fails without good cause to attend for or submit himself to such examination, he shall be treated as capable of work.

(4) Regulations may prescribe for the purposes of this section—

- (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
- (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

The own occupation test.

167B.—(1) Where a person has been engaged in remunerative work for more than 8 weeks in the 21 weeks immediately preceding the day with respect to which it falls to be determined whether he is or was incapable of work, the test applicable is the own occupation test.

(2) The own occupation test is whether he is incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged.

(3) Where for any purpose of this Act it is determined in relation to a person—

- (a) that the test applicable with respect to any day is the own occupation test; and
- (b) that he is on that test incapable of work,

that test remains applicable in his case until the end of the spell of incapacity beginning with that day or, as the case may be, in which that day falls, or until the 197th day of incapacity for work in that spell, whichever is the earlier.

For this purpose a “spell of incapacity” means a series of 4 or more consecutive days of incapacity for work; and any two such spells not separated by a period of more than 8 weeks shall be treated as one spell of incapacity.

(4) For the purposes of subsection (3) above a day of incapacity for work means a day—

- (a) with respect to which it has been determined for any purpose of this Act that the person in question was incapable of work; or
- (b) in respect of which he was entitled to statutory sick pay; or
- (c) in the case of a woman, which falls within the maternity allowance period; or
- (d) which in accordance with regulations is to be treated for those purposes as a day of incapacity for work.

(5) Any provision of this Act apart from subsection (4) above under or by virtue of which a day is or is not to be treated for any purpose as a day of incapacity for work shall be disregarded for the purposes of this section.

(6) Provision may be made by regulations defining for the purposes of this section what is meant by “remunerative work”.

The regulations may, in particular, provide—

- (a) for “remunerative work” to be defined by reference to the number of hours worked per week; and
- (b) for training of any prescribed description to be treated as if it were remunerative work.

(7) Provision may be made by regulations as to the application of this section in cases where a person engages in more than one occupation or in different kinds of work.

(8) Regulations may provide that subsection (3) above shall have effect as if—

- (a) the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
- (b) for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.

The all work test.

167C.—(1) Where in any case the own occupation test is not applicable, or has ceased to apply, the test applicable is the all work test.

(2) Provision shall be made by regulations—

- (a) defining the all work test by reference to the extent of a person’s incapacity by reason of some specific disease or bodily or mental disablement to perform such activities as may be prescribed; and

(b) as to the manner of assessing whether the all work test is satisfied.

(3) Regulations may provide that where the all work test applies the test shall, if the prescribed conditions are met, be treated as satisfied until the person has been assessed or he falls to be treated as capable of work in accordance with regulations under section 167A(2) or (3) above or section 167E below.

The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.”.