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STATUTORY INSTRUMENTS

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**1994 No. 1898**

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

**Title and commencement**

1.—(1) This Order may be cited as the Social Security (Incapacity for Work) (Northern Ireland) Order 1994.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the confirmatory procedure” means the procedure described in section 172(1) of the Contributions and Benefits Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the Department” means the Department of Health and Social Services.

**Incapacity benefit: entitlement**

3.—(1) In Part II of the Contributions and Benefits Act (contributory benefits), after section 30 insert—

“Incapacity benefit

**Incapacity benefit: entitlement.**

30A.—(1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.

(2) The conditions are that—

- (a) he is under pensionable age on the day in question and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or
- (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
  - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or

(ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) A person is not entitled to short-term incapacity benefit for the first 3 days of any period of incapacity for work.

(4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.

(5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.”;

(2) In Schedule 3 to the Contributions and Benefits Act (contribution conditions for entitlement to benefit), in the heading before paragraph 2 and in sub-paragraph (1) of that paragraph for “sickness benefit” substitute “short-term incapacity benefit”.

### **Incapacity benefit: rate**

4.—(1) In the Contributions and Benefits Act, after section 30A (inserted by Article 3) insert—

#### **“Incapacity benefit: rate.**

**30B.**—(1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.

(2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

(3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
- (b) any increase (for dependants) under section 80, 83 or 85 below; and
- (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.

(4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—

- (a) is terminally ill; or
- (b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

(5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.

(6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.

(7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.”

(2) In Part I of Schedule 4 to the Contributions and Benefits Act (rates of benefit, etc.: contributory periodical benefits), for paragraph 2 substitute—

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“2. Short-term incapacity benefit.	(a)	lower rate ... ..	£43.45
	(b)	higher rate ... ..	£52.50.
2A. Long-term incapacity benefit.		£57.60.”.	

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(3) In section 80 of the Contributions and Benefits Act (increases for beneficiary’s dependent children), for subsection (2)(b) and (c) substitute—

- “(b) short-term incapacity benefit at the higher rate or where the beneficiary is over pensionable age;
- (c) long-term incapacity benefit; and”.

(4) After section 86 of the Contributions and Benefits Act insert—

**“Incapacity benefit: increase for adult dependants.**

**86A.—**(1) The weekly rates of short-term and long-term incapacity benefit shall, in such circumstances as may be prescribed, be increased for adult dependants by the appropriate amount specified in relation to benefit of that description in Schedule 4, Part IV, column (3).

(2) Regulations may provide that where the person in respect of whom an increase of benefit is claimed has earnings in excess of such amount as may be prescribed there shall be no increase of benefit under this section.”.

(5) In Part IV of Schedule 4 to the Contributions and Benefits Act (rates of benefit etc.: increases for dependants), after paragraph 1 insert—

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“1A. Short-term incapacity benefit—			
(a)	where the	11.00	26.90
	beneficiary is under		
	pensionable age		
(b)	where the	11.00	33.10”and for paragraph 2
	beneficiary is over		substitute—
	pensionable age		

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“2. Long-term incapacity benefit	11.00	34.50”
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(6) Any order under section 132 of the Administration Act (annual up-rating of benefits) made by the Department before the commencement of this Article shall include provision—

- (a) making such increase (if any) in the sum specified in the provision inserted by paragraph (2) as the amount of short-term incapacity benefit at the higher rate as is necessary to make that sum equal to the higher rate or, if there is only one such rate, to the rate of statutory sick pay payable after the order comes into operation; and
- (b) making such increases in the other sums specified in the provisions inserted by paragraphs (2) and (5) in Schedule 4 to the Contributions and Benefits Act as would have been required if the provisions in question had been in operation at all material times.

#### **Incapacity benefit: supplementary provisions**

5.—(1) After section 30B of the Contributions and Benefits Act (inserted by Article 4) insert—

##### **“Incapacity benefit: days and periods of incapacity for work.**

**30C.**—(1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—

- (a) a day of incapacity for work means a day on which a person is incapable of work;
- (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
- (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.

(2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.

(3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.

(4) Regulations may provide—

- (a) that paragraph (b) of subsection (1) above shall have effect as if 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 specified in the regulations; and
- (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.

(5) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him; and

- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(6) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

- (7) For the purposes of this section “week” means any period of 7 days.

**Incapacity benefit: construction of references to days of entitlement.**

**30D.**—(1) The following provisions have effect in calculating for the purposes of—

- (a) section 30A(4) above (length of entitlement to short-term incapacity benefit);
- (b) section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);
- (c) section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and
- (d) section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

the number of days for which a person has been entitled to short-term incapacity benefit.

(2) There shall be included—

- (a) the first 3 days of the period of incapacity for work; and
- (b) in the case of a woman, any days for which she was entitled to maternity allowance.

(3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.

(4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.

**Incapacity benefit: reduction for councillor’s allowance.**

**30E.**—(1) Where the net amount of councillor’s allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess

shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(2) In this section “councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a member of a district council as may be prescribed for the purposes of this section; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments.

(3) In subsection (1) above “net amount”, in relation to any councillor’s allowance to which a person is entitled, means the aggregate amount of the councillor’s allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question.”.

(2) In Schedule 3 to the Contributions and Benefits Act, at the end of paragraph 2 (contribution conditions for entitlement to short-term incapacity benefit) add—

“(7) Where a person makes a claim for incapacity benefit and does not satisfy the second contribution condition (specified in sub-paragraph (3) above) and, in a later benefit year in which he would satisfy that condition had no such claim been made, he makes a further claim for incapacity benefit, the previous claim shall be disregarded.”.

#### **Power to provide for the transition to incapacity benefit**

6.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of, or in connection with, the transition to incapacity benefit from sickness benefit and invalidity benefit.

Nothing in the following provisions of this Article shall be construed as restricting the generality of that power.

(2) In this Article—

“commencement” means the commencement of Articles 3 to 5 and the consequential repeal of the provisions of the Contributions and Benefits Act relating to sickness benefit and invalidity benefit; and

“prescribed” means prescribed by regulations under this Article.

(3) Regulations under this Article may provide that where a person was entitled to sickness benefit or invalidity benefit immediately before commencement any award of sickness benefit or invalidity benefit shall have effect after commencement, in accordance with the regulations and subject to such modifications as may be prescribed, as an award of incapacity benefit.

In the following provisions of this Article such an award is referred to as a “transitional award” of incapacity benefit.

(4) The reference in paragraph (3) to a person who was entitled to sickness benefit or invalidity benefit includes a person who would have been so entitled but for being disqualified by virtue of regulations under section 32 or 59 of the Contributions and Benefits Act; and regulations under this Article may provide that any such disqualification shall have such corresponding effect as may be prescribed in relation to the transitional award.

(5) Regulations under this Article may provide that a person’s entitlement under a transitional award of incapacity benefit shall, except as may be prescribed, be subject to satisfying the conditions of entitlement to incapacity benefit, and may in particular provide—

- (a) for the determination in accordance with Part XIIIA of the Contributions and Benefits Act (inserted by Article 7) of the question whether that person is incapable of work;
- (b) for the termination of his entitlement on his attaining pensionable age.

Excepted cases may be defined, in particular, by reference to the age of the person on commencement and whether he was receiving invalidity benefit on 1st December 1993 (the date of the announcement of the new scheme).

(6) Regulations under this Article may provide—

- (a) that days before commencement which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of incapacity for work for the purposes of incapacity benefit; and
- (b) that days of entitlement to sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of entitlement to incapacity benefit.

Such provision may be made for the purposes of a transitional award of incapacity benefit or of enabling a claim for incapacity benefit to be made after commencement on the basis that a day of incapacity for work after commencement forms part of a period of incapacity for work beginning before commencement; and such cases are referred to in the following provisions of this Article as “transitional cases”.

(7) Regulations under this Article may provide—

- (a) for the rate of short-term incapacity benefit under a transitional award to be increased, in such cases as may be prescribed, as if that benefit were sickness benefit and the provisions of Part IV of the Contributions and Benefits Act (increases for dependants) continued to apply to that benefit; and
- (b) for the payment in transitional cases, in such circumstances as may be prescribed, of long-term incapacity benefit to persons over pensionable age.

(8) Regulations under this Article may provide that in transitional cases the rate of short-term incapacity benefit at the higher rate or of long-term incapacity benefit shall be calculated—

- (a) by reference to the rate of invalidity benefit, and of any relevant related allowance, addition or increase, paid or payable immediately before commencement, with such up-rating (if any) as may be provided for in accordance with the regulations (whether by applying the provisions of section 132 of the Administration Act or otherwise); and
- (b) without any increase or addition which would otherwise be payable with incapacity benefit.

(9) If regulations make provision of the kind mentioned in paragraph (8) they may also make with respect to any additional pension element of incapacity benefit provision corresponding to any of the provisions in force before commencement with respect to the additional pension element of invalidity pension.

(10) Regulations under this Article may provide, in relation to transitional cases where the rate of incapacity benefit falls to be calculated by reference to the rate of dependency allowance paid or payable before commencement, that any old saving provisions shall have effect subject to the regulations or shall cease to have effect in accordance with the regulations.

For the purposes of this paragraph—

“dependency allowance” means an allowance of the kind provided for in Part IV of the Contributions and Benefits Act;

“old saving provisions” means provisions of any description, including administrative provisions, in connection with a previous change affecting entitlement to or the amount of dependency allowances, preserving a person’s position in any respect.

(11) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(12) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations under this Article shall be subject to the confirmatory procedure.

(13) A statutory rule—

- (a) which contains (whether alone or with other provisions) any regulations made under this Article; and
- (b) which is not subject to the confirmatory procedure, shall be subject to negative resolution.

### **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.”.

### **Test of incapacity for work: supplementary provisions**

8.—(1) In the Contributions and Benefits Act, after section 167C (inserted by Article 7) insert—

#### **“Incapacity for work: persons to be treated as incapable or capable of work.**

**167D.**—(1) Regulations may provide that a person shall be treated as capable of work, or as incapable of work, in such cases or circumstances as may be prescribed.

(2) Regulations may, in particular, provide that a person shall be treated as capable of work if he does work of a prescribed description, or more than the prescribed amount of work of a prescribed description.

Accordingly regulations may provide that a person shall not be treated as capable of work by reason only of his doing such work as may be prescribed, or no more than the prescribed amount of work of a prescribed description.

#### **Incapacity for work: disqualification, etc.**

**167E.**—(1) Regulations may provide for disqualifying a person for receiving any benefit, allowance or other advantage under any provision for the purposes of which this Part of this Act applies, or, in such cases as may be prescribed, provide that a

person shall be treated as capable of work, if—

- (a) he has become incapable of work through his own misconduct;
- (b) he fails without good cause to attend for or submit himself to such medical or other treatment as may be required in accordance with the regulations; or
- (c) he fails without good cause to observe any prescribed rules of behaviour.

(2) Regulations shall provide that any such disqualification shall be, or as the case may be that the person shall be treated as capable of work, for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act.

(3) 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.

#### **Incapacity for work: work as councillor to be disregarded.**

**167F.**—(1) In determining whether a person is capable or incapable of work, there shall be disregarded any work which that person has undertaken as a councillor.

(2) For this purpose “councillor” means a member of a district council.

(3) The reference in subsection (1) above to the work which a person undertakes as a councillor shall be taken to include any work which he undertakes as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.

(4) In making any such determination as is mentioned in subsection (1) above a person shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this subsection.

The “pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into operation of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989, which made provision corresponding to the provision made by this section).

#### **Incapacity for work: supplementary provisions.**

**167G.**—(1) The provisions of this Part of this Act do not apply—

- (a) for the purposes of Part V of this Act (benefit for industrial injuries: see section 94(6) above);
- (b) for the purposes of Part XI of this Act (statutory sick pay: see section 147(4) above); or
- (c) for such other purposes as may be prescribed.

(2) In this Part of this Act—

“prescribed” means specified in or determined in accordance with regulations; and  
“week” means any period of 7 days.”

(2) In Part II of the Administration Act (adjudication), after section 59 insert—

“Incapacity for work

#### **Adjudication: incapacity for work.**

**59A.**—(1) The following provisions apply in relation to the determination, for any purpose for which the provisions of Part XIII A of the Contributions and Benefits Act apply, whether a person—

- (a) is, or is to be treated as, capable or incapable of work; or
- (b) falls to be disqualified for any period in accordance with regulations under section 167E of that Act;

and to the determination for any such purpose of such other related questions as may be prescribed.

(2) Provision may be made by regulations for a determination made for one such purpose to be treated as conclusive for another such purpose.

Regulations may in particular provide that a determination that a person is disqualified for any period in accordance with regulations under section 167E of the Contributions and Benefits Act shall have effect for such purposes as may be prescribed as a determination that he is to be treated as capable of work for that period, and *vice versa*.

(3) Provision may be made by regulations for questions of such descriptions as may be prescribed to be determined by an adjudication officer, notwithstanding that other questions fall to be determined by another authority.

(4) Provision may be made by regulations—

- (a) requiring a social security appeal tribunal to sit with one or more medical assessors in such classes of case as may be prescribed; and
- (b) as to the constitution of panels of medical practitioners to act as medical assessors in such cases;

and regulations under this subsection may confer on the President, or such other person as may be prescribed, such functions as may be prescribed.”.

(3) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations made under any of the following provisions shall be subject to the confirmatory procedure—

(a) in the Contributions and Benefits Act—

- section 167A(2), (3) or (4);
- section 167B(4)(d), (6), (7) or (8);
- section 167C(2) or (3);
- section 167D;
- section 167E(1), (2) or (3); or
- section 167G(1)(c);

(b) in the Administration Act, section 59A(2), (3) or (4).

#### **Power to provide for the transition to the new test of incapacity for work**

9.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of, or in connection with, the transition to the test of incapacity for work provided for by Articles 7 and 8.

Nothing in the following provisions of this Article shall be construed as restricting the generality of that power.

(2) In this Article—

“commencement” means the commencement of Articles 7 and 8; and

“prescribed” means prescribed by regulations under this Article.

(3) Regulations under this Article may provide—

- (a) that days of incapacity for work before commencement, and such other days as may be prescribed, shall be taken into account for the purposes of section 167B(3) of the Contributions and Benefits Act (period from which the all work test applies);
- (b) that a person’s continued enjoyment after commencement of any allowance or other advantage under any provision for the purposes of which Part XIIA of the Contributions and Benefits Act applies shall, except as may be prescribed, be subject to satisfying the test of incapacity for work under that Part; and
- (c) for the determination in accordance with that Part of the question whether the person is incapable of work.

(4) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(5) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations made under this Article shall be subject to the confirmatory procedure.

(6) A statutory rule—

- (a) which contains (whether alone or with other provisions) any regulations made under this Article; and
- (b) which is not subject to the confirmatory procedure,  
shall be subject to negative resolution.

### **Rate of statutory sick pay**

**10.**—(1) In section 153(1) of the Contributions and Benefits Act (statutory sick pay: rate of payment), for the words following “at the weekly rate of” substitute “£52.50”.

(2) Any order under section 132 of the Administration Act (annual up-rating of benefits) made by the Department before the commencement of this Article shall include provision making such increase (if any) in the sum specified in the amendment made by paragraph (1) as the amount of statutory sick pay as is necessary to make that sum equal to the higher rate of statutory sick pay payable after the order comes into operation.

(3) For section 153(2)(a) of the Contributions and Benefits Act substitute—

- “(a) amend subsection (1) above so as to substitute different provision as to the weekly rate or rates of statutory sick pay; and”.

(4) In sections 151(4) and 154(2)(b) of that Act for “the appropriate weekly rate set out in” substitute “the weekly rate applicable in accordance with”.

### *Other amendments*

### **Severe disablement allowance**

**11.**—(1) Section 68 of the Contributions and Benefits Act (severe disablement allowance) is amended as follows.

(2) After subsection (10) insert—

“(10A) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to a severe disablement allowance for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for a severe disablement allowance as having been a day on which he was both incapable of work and disabled.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.”.

(3) In subsection (11) (regulation-making powers), after paragraph

(c) insert—

- “(cc) may prescribe evidence which is to be treated as establishing that a person suffers from loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.”.

### **Disability working allowance**

**12.—**(1) Section 128 of the Contributions and Benefits Act (disability working allowance) is amended as follows.

(2) In subsection (1) (conditions of entitlement) for “qualifies under subsection (2) below” substitute “qualifies under subsection (2) or (2A) below”.

(3) After subsection (2) insert—

“(2A) A person qualifies under this subsection if—

- (a) on one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made he was engaged in training for work; and
- (b) a relevant benefit was payable to him for one or more of the 56 days immediately preceding—
  - (i) the first day of training for work falling within the 56 days mentioned in paragraph (a) above; or
  - (ii) an earlier day of training for work which formed part of the same period of training for work as that day.

(2B) For the purposes of subsection (2A) above—

- (a) the following are relevant benefits—
  - (i) the higher rate of short-term incapacity benefit;
  - (ii) long-term incapacity benefit;
  - (iii) a severe disablement allowance;
 or a corresponding benefit under any enactment having effect in Great Britain;
- (b) “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed; and
- (c) a period of training for work means a series of consecutive days of training for work, there being disregarded for this purpose such days as may be prescribed.”.

### **Consequential amendments and repeals**

**13.—**(1) The enactments mentioned in Schedule 1 have effect subject to the amendments specified there which are consequential on the provisions of this Order.

Part I contains amendments of the Contributions and Benefits Act; and

Part II contains amendments of the Administration Act and certain other enactments.

(2) The enactments mentioned in Schedule 2 are repealed to the extent specified.

### **General power to make transitional and consequential provision**

**14.—**(1) The Department may by regulations make such transitional provision, and such consequential provision or savings, as appear to it to be necessary or expedient in preparation for or in connection with the coming into force of any provision of this Order or the operation of

any enactment repealed or amended by any such provision during any period when the repeal or amendment is not wholly in operation.

(2) The power conferred by paragraph (1) is not exercisable in respect of any matter for which provision may be made under Article 6 (power to provide for transition to incapacity benefit) or Article 9 (power to provide for the transition to new test of incapacity for work).

(3) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(4) A statutory rule—

- (a) which contains (whether alone or with other provisions) any regulations made under this Article; and
- (b) which is not subject to the confirmatory procedure, shall be subject to negative resolution.

### **Saving for existing enactments**

**15.—**(1) The amendments of the Contributions and Benefits Act made by this Order shall be treated as repealing and re-enacting with modifications the provisions of that Act relating to incapacity for work, so that, subject to any amendment, repeal or revocation—

- (a) any reference in any enactment to any such provision shall be construed as a reference to the corresponding new provision or, as the case may be, to the provision as amended by this Order; and
  - (b) instruments made under any such provision—
    - (i) shall continue in force and have effect as if made under the corresponding new provision or, as the case may be, the provision as amended by this Order; and
    - (ii) shall be construed as if originally so made.
- (2) In any enactment, subject to any amendment—
- (a) any reference to sickness benefit shall be construed as a reference to short-term incapacity benefit at the lower rate; and
  - (b) any reference to invalidity benefit or invalidity pension shall be construed as a reference to short-term incapacity benefit at the higher rate or long-term incapacity benefit.
- (3) In this Article—
- “enactment” includes an enactment contained in an instrument;
  - “instrument” has the meaning given by section 1(c) of the Interpretation Act (Northern Ireland) 1954.

*N.H. Nicholls*  
Clerk of the Privy Council