

1995 No. 129

HOUSING; RATES

**The Housing Benefit (Miscellaneous Amendments)
Regulations (Northern Ireland) 1995***Made* 28th March 1995*Coming into operation in accordance with regulation 1(1)*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(d), 129(2) and (4), 131(1) and 132(3) and (4)(a) and (b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), section 120(1) and (2) of the Social Security Administration (Northern Ireland) Act 1992(b) and Article 14(1) and (3) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(c) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(d) so far as relates to matters with regard to which such consent is required, and after agreement by the Social Security Advisory Committee that certain proposals to make these Regulations should not be referred to it(e), and by this Statutory Rule which contains regulations consequential on, and which is otherwise made before the end of the period of 6 months beginning with the coming into operation of, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(f), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1995 and shall come into operation as follows—

- (a) regulations 1 and 2 on 1st April 1995;
- (b) regulations 5 and 9—
 - (i) in any case to which paragraph (2) applies, on 1st April 1995, and
 - (ii) in any other case; on 3rd April 1995;
- (c) regulations 10 and 11 on 13th April 1995, and
- (d) regulations 3, 4, 6, 7, 8 and 12 on 17th April 1995.

(a) 1992 c. 7

(b) 1992 c. 8

(c) S.I. 1994/1898 (N.I. 12)

(d) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8))

(e) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

(f) See section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992

(2) This paragraph applies in any case where—

(a) rent is payable at intervals of one month or any other interval which is not a week or a multiple thereof, or

(b) payments by way of rates are not made together with payments of rent at weekly intervals or multiples thereof.

(3) In these Regulations “the principal Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(a).

(4) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation) after the definition of “the Registered Homes Order”(c) there shall be inserted the following definition—

“ “adjudication officer” means an officer appointed in accordance with section 36(1) of the Social Security Administration (Northern Ireland) Act 1992;”.

Amendment of regulation 11 of the principal Regulations

3. In regulation 11(3) of the principal Regulations (restrictions on unreasonable payments) after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(bb) is treated as capable of work in accordance with regulations made under section 167E of the Contributions and Benefits Act (incapacity for work: disqualification, etc)(d), or”.

Amendment of regulation 21A of the principal Regulations

4. In regulation 21A of the principal Regulations (treatment of child care charges)(e)—

(a) in paragraph (4)—

(i) after sub-paragraph (a) there shall be inserted the following sub-paragraphs—

“(aa) the claimant’s applicable amount would include a disability premium or a higher pensioner premium on account of the other member’s incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 167E of the Contributions and Benefits Act (incapacity for work: disqualification, etc);

(a) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 No. 424, S.R. 1989 No. 125, S.R. 1990 Nos. 136 and 297, S.R. 1992 Nos. 6 and 549, S.R. 1993 No. 149 and S.R. 1994 Nos. 233, 274 and 335

(b) 1954 c. 33 (N.I.)

(c) Definition inserted by regulation 3(2) of S.R. 1993 No. 149

(d) Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(e) Regulation 21A was inserted by regulation 2(3) of S.R. 1994 No. 274

- (ab) the claimant (within the meaning of regulation 2(1)) is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work)(a) for a continuous period of not less than 196 days; and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;”, and
- (ii) in sub-paragraph (b) for head (i) there shall be substituted the following head—
- “(i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the Contributions and Benefits Act(b);”, and
- (b) after paragraph (4) there shall be added the following paragraph—
- “(5) For the purposes of paragraph (4), once paragraph (4)(ab) applies to the claimant, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.”.

Amendment of regulation 35 of the principal Regulations

5. In regulation 35 of the principal Regulations (notional income)—

- (a) after paragraph (4) there shall be inserted the following paragraph—
- “(4A) Where a claimant is in receipt of sickness benefit or invalidity pension up to 12th April 1995, the appropriate authority shall treat the claimant as possessing incapacity benefit—
- (a) in a case in which the claimant’s weekly amount of eligible rent or, as the case may be, rates falls to be calculated in accordance with regulation 69(2)(b) or, as the case may be, (3)(b) (calculation of weekly amounts), from and including 1st April 1995 to 12th April 1995;
- (b) in any other case, from and including 3rd April 1995 to 12th April 1995,
- at the rate at which incapacity benefit is payable to him from and including 13th April 1995.”, and
- (b) in paragraph (6) for “paragraphs (1) to (4)” there shall be substituted “paragraphs (1) to (4A)”.

(a) Part XIIA was inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(b) Paragraph 2 of Part I of Schedule 4 was substituted by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

Amendment of regulation 48A of the principal Regulations

6. In regulation 48A of the principal Regulations (full-time students to be treated as not liable to make payments in respect of a dwelling)(a)—

(a) in paragraph (2) after sub-paragraph (b) there shall be inserted the following sub-paragraphs—

“(ba) whose applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 167E of the Contributions and Benefits Act (incapacity for work: disqualification, etc);

(bb) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period;”, and

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) For the purposes of paragraph (2), once paragraph (2)(bb) applies to a full-time student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.”.

Amendment of regulation 51 of the principal Regulations

7. In regulation 51 of the principal Regulations (eligible rent)—

(a) in paragraph (2)(c)—

(i) “either” shall be omitted;

(ii) after head (ii) there shall be added the following heads—

“(iii) his applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 167E of the Contributions and Benefits Act (incapacity for work: disqualification, etc), or

(iv) he is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period, or”, and

(a) Regulation 48A was inserted by regulation 3(6) of S.R. 1990 No. 297

(b) after paragraph (2) there shall be added the following paragraph—

“(3) For the purposes of paragraph (2), once paragraph (2)(c)(iv) applies to a student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that paragraph shall, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.”.

Amendment of Schedule 2 to the principal Regulations

8. In Schedule 2 to the principal Regulations (applicable amounts) in paragraph 12 (additional condition for the higher pensioner and disability premiums)(a)—

(a) in sub-paragraph (1)(a)(i)—

(i) for “an invalidity pension” there shall be substituted “long-term incapacity benefit”;

(ii) for “in the case of invalidity pension” there shall be substituted “in the case of long-term incapacity benefit”;

(b) in sub-paragraph (1)(a)(ii) for “invalidity pension” in both places where it appears there shall be substituted “long-term incapacity benefit”;

(c) in sub-paragraph (1) for head (b) there shall be substituted the following head—

“(b) the claimant—

(i) is incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work), and

(ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than—

(aa) in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act (incapacity benefit: rate)(b), 196 days;

(bb) in any other case, 364 days.”;

(d) in sub-paragraph (3) for “for the purposes of the provisions specified in that provision” there shall be substituted “or to be incapable of work”, and

(e) for sub-paragraph (6) there shall be substituted the following sub-paragraphs—

“(6) For the purposes of sub-paragraph (1)(b), where any 2 or more periods of incapacity are separated by a break of not more than 56 days, those periods shall be treated as one continuous period.

(a) Relevant amending regulations are S.R. 1988 No. 424, S.R. 1989 No. 125, S.R. 1990 No. 136 and S.R. 1992 No. 6

(b) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(7) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Contributions and Benefits Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.”.

Amendment of Schedule 4 to the principal Regulations

9. In Schedule 4 to the principal Regulations (sums to be disregarded in the calculation of income other than earnings) after paragraph 58(a) there shall be added the following paragraph—

“59. Where a claimant, to whom regulation 35(4A)(b) applies, is in receipt of sickness benefit or invalidity pension up to 12th April 1995, and incapacity benefit on 13th April 1995, that sickness benefit or invalidity pension, as the case may be, to the extent that it is payable in respect of the period between 1st or 3rd April 1995, as the case may be, and 12th April 1995 (all dates inclusive).”.

Amendment of the Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988

10.—(1) The Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988(c) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “the Order” there shall be inserted the following definitions—

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

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(d);”.

(3) In regulation 2(1) (information to be supplied by the Department to the Executive)—

(a) in sub-paragraph (k)(e) for “sub-paragraphs (a) to (j), (l) or (m)” there shall be substituted “sub-paragraphs (a) to (j) or (l) to (r)”, and

(b) after sub-paragraph (m)(f) there shall be added the following sub-paragraphs—

“(n) that a determination has been made that a claimant or any partner of his—

(a) Paragraph 58 was added by regulation 12(b) of S.R. 1994 No. 335

(b) Paragraph (4A) is inserted by regulation 5(a) of these regulations

(c) S.R. 1988 No. 118, amended by S.R. 1992 No. 141 and S.R. 1994 No. 335

(d) S.R. 1987 No. 461

(e) Sub-paragraph (k) was added by regulation 16(c) of S.R. 1992 No. 141

(f) Sub-paragraph (m) was added by regulation 14(3)(b) of S.R. 1994 No. 335

- (i) is, or is to be treated as, capable or incapable of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act (incapacity for work);
- (ii) falls to be disqualified for any period in accordance with regulations made under section 167E of that Act (incapacity for work: disqualification, etc);
- (iii) is terminally ill within the meaning of section 30B(4) of that Act (incapacity benefit: rate);
- (o) the period for which the claimant or any partner of his falls to be disqualified, or is treated as capable of work, in accordance with regulations made under section 167E of the Contributions and Benefits Act;
- (p) the number of days, or such period, as may be required, in respect of which a determination is made for the purposes of sub-paragraph (n)(i) or (iii);
- (q) the rate at which a claimant or any partner of his is receiving incapacity benefit;
- (r) any further information required for the purposes of determining—
 - (i) the treatment of a claimant's child care charges under regulation 21A of the Housing Benefit Regulations (treatment of child care charges);
 - (ii) the treatment of a full-time student in respect of a dwelling under regulation 48A of the Housing Benefit Regulations (full-time students to be treated as not liable to make payments in respect of a dwelling);
 - (iii) the calculation of a student's eligible rent under regulation 51 of the Housing Benefit Regulations (eligible rent), or
 - (iv) a person's applicable amount under paragraph 11 of Schedule 2 to the Housing Benefit Regulations (disability premium), where that person is incapable, or treated as incapable, of work in accordance with the provisions of, and regulations made under, Part XIIA of the Contributions and Benefits Act."

(4) In regulation 3(1) (information to be supplied by the Executive to the Department)(a) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) that, a claimant was entitled to housing benefit on 1st December 1993, his applicable amount included the disability premium on account of his own incapacity on 12th April 1995 and, he is aged 58 or over on 13th April 1995.”

Transitional provisions

11.—(1) Where, on 12th April 1995, the disability premium was applicable to a claimant by virtue of paragraph 12(1)(b) of Schedule 2 to the principal Regulations as in operation on that date, the disability premium shall continue to be applicable to that claimant from and including 13th April 1995 and for so long as he is incapable of work in accordance with the provisions of, and regulations made under, Part XIII A of the Contributions and Benefits Act (incapacity for work).

(2) Paragraph (1) shall not apply to a claimant who ceases to be incapable of work in accordance with the provisions of, and regulations made under, Part XIII A of the Contributions and Benefits Act for a period of more than 56 continuous days.

(3) Where, in any period immediately preceding 13th April 1995, the circumstances mentioned in paragraph 12(6) of Schedule 2 to the principal Regulations, as in operation on 12th April 1995, applied to a claimant to whom the disability premium was not applicable, that claimant shall be treated for the purposes of regulations 21A(4)(ab), 48A(2)(bb) and 51(2)(c)(iv) of, and paragraph 12(1)(b) of Schedule 2 to, the principal Regulations as if he had been incapable of work in accordance with the provisions of, and regulations made under, Part XIII A of the Contributions and Benefits Act throughout that period.

Saving

12. Where the higher pensioner premium was applicable to a claimant on, or at any time during the 56 days immediately preceding, 12th April 1995 by virtue of paragraph 12(1)(a)(ii) of Schedule 2 to the principal Regulations, as in operation on that date, paragraph 12 of Schedule 2 to the principal Regulations shall continue to apply in that claimant's case as if regulation 8 of these Regulations had not been made.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 28th March 1995.

(L.S.)

W. G. Purdy

Assistant Secretary

The Department of the Environment for Northern Ireland hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 28th March 1995.

(L.S.)

R. E. Aiken

Assistant Secretary

(This note is not part of the Regulations.)

These Regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987 and the Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988.

The amendments are consequential on the coming into operation of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 ("the Incapacity for Work Order"), which replaces sickness and invalidity benefits with incapacity benefit, and provides for a new test of incapacity for work.

The Regulations make the following amendments—

- (a) they extend the qualifying period for the disability premium on grounds of incapacity for work from 28 weeks to 364 days, except for claimants who are terminally ill and they provide that the qualifying period may be broken by intervals of up to 56 days (regulation 8);
- (b) they specify further the information which the Department of Health and Social Services may supply to the Northern Ireland Housing Executive ("the Executive") and the information which the Executive shall supply to the Department of Health and Social Services (regulation 10);
- (c) they make additional minor consequential, transitional and saving amendments (regulations 2 to 9, 11 and 12).

These Regulations, except parts of regulations 4, 6, 7 and 8 are made pursuant to Article 14(1) and (3) of the Incapacity for Work Order and are made before the end of a period of 6 months from the commencement of the said Article 14(1) and (3), and are accordingly exempt by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 ("the 1992 Act"), from reference to the Social Security Advisory Committee. Article 14(1) and (3) of the Incapacity for Work Order was brought into operation on 21st November 1994 by virtue of the Social Security (Incapacity for Work) (1994 Order) (Commencement) Order (Northern Ireland) 1994 (S.R. 1994 No. 450 (C. 15)).

Otherwise in so far as these Regulations are required to be referred to the Social Security Advisory Committee under section 149(2) of the 1992 Act, after agreement by the Social Security Advisory Committee they have not been so referred by virtue of section 150(1)(b) of the 1992 Act.