

1995 No. 149

SOCIAL SECURITY

The Social Security (Incapacity for Work) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995*Made 7th April 1995**Coming into operation in accordance with regulation 1(2)*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 167A, 167C(3), 167D and 167E of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), sections 57(1) and 59A of, and paragraph 4 of Schedule 3 to, the Social Security Administration (Northern Ireland) Act 1992(b) and Articles 6, 9 and 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(c) and of all other powers enabling it in that behalf, by this statutory rule which contains only regulations made by virtue of, or consequential upon, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and which is made before the end of a period of 6 months beginning with the coming into operation of that Order, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Incapacity for Work) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995.

(2) Regulations 1, 3 and 4 shall come into operation forthwith and regulation 2 on 13th April 1995 immediately after the coming into operation of the Social Security (Medical Evidence) (Amendment) Regulations (Northern Ireland) 1994(d).

(3) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these regulations as it applies to a Measure of the Assembly.

Amendment of the Social Security (Medical Evidence) Regulations

2.—(1) The Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(f) shall be amended in accordance with paragraphs (2) and (3).

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- (a) 1992 c. 7; sections 167A and 167C are inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)); sections 167D and 167E are inserted by Article 8(1) of that Order
 (b) 1992 c. 8; section 59A is inserted by Article 8(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
 (c) S.I. 1994/1898 (N.I. 12)
 (d) S.R. 1994 No. 468
 (e) 1954 c. 33 (N.I.)
 (f) S.R. 1976 No. 175; relevant amending regulations are S.R. 1982 No. 153, S.R. 1992 No. 83 and S.R. 1994 No. 468

(2) In regulation 2(1)(d)(a) (evidence of incapacity for work and confinement) for “from a doctor” there shall be substituted “in accordance with sub-paragraphs (a) to (c)” and after “refrain” there shall be inserted “(or should have refrained)”.

(3) In paragraph 3 of Part I of Schedule 1B(b) (rules for Form Med 4) for “, 10 and 11” there shall be substituted “and 9 to 13”.

Amendment of the Social Security (Incapacity Benefit) (Transitional) Regulations

3.—(1) The Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(c) shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 13(2)(b) (special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work) for “within a period” there shall be substituted “occurring in whole or in part in a period”.

(3) After regulation 17 (transitional awards of long-term incapacity benefit) there shall be inserted the following regulation—

“Awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link

17A. Where a person had been entitled to invalidity benefit in a period of interruption of employment occurring in whole or in part in a period not exceeding 57 days immediately before the appointed day and becomes entitled to an award of incapacity benefit on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day, that award shall have effect as if it were an award of long-term incapacity benefit.”.

(4) In regulation 18 (rate of long-term incapacity benefit in transitional cases) for paragraph (8) there shall be substituted the following paragraph—

“(8) For the purposes of Part IV, a “transitional case” means a case where a person is entitled to an award of long-term incapacity benefit by virtue of regulation 17 or 17A.”.

(5) In regulation 20(2)(b) (special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work) for “within a period” there shall be substituted “occurring in whole or in part in a period”.

(6) In regulation 22(1)(b)(ii) (effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term incapacity benefit) for “pension”, in both places where it occurs, there shall be substituted “guaranteed minimum pension”.

(7) After regulation 28 (transitional provisions for an increase of severe disablement allowance for adult dependants) there shall be inserted the following regulation—

(a) Regulation 2(1)(d) is inserted by S.R. 1994 No. 468

(b) Schedule 1B is inserted by S.R. 1994 No. 468

(c) S.R. 1995 No. 35

“Transitional provision for entitlement to severe disablement allowance where a person has been engaged in training for work

28A. For the purposes of entitlement to severe disablement allowance where a person—

- (a) at any time in a period of not more than 57 days immediately before the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations(a);
- (b) was entitled to severe disablement allowance in a period of interruption of employment within a period not exceeding 57 days prior to the first day of attendance on the training course; and
- (c) becomes incapable of work within a period of 57 days after the last day of attendance on a training course,

he shall be treated as incapable of work and disabled for the days falling within the periods referred to in paragraphs (a), (b) and (c) notwithstanding that he may have been capable of work on any of those days.”

(8) In regulation 31 (application of the new tests of incapacity for work)—

(a) in paragraph (4) for “sub-paragraphs (d) to (h)” there shall be substituted “sub-paragraphs (d) to (k)”; and

(b) in paragraph (5)—

(i) in sub-paragraph (a)(ii) for “was not capable” there shall be substituted “was incapable”;

(ii) in sub-paragraph (c) after “the appointed day” there shall be inserted “and the spell of incapacity for work which is running at the appointed day continues”;

(iii) in sub-paragraph (h) for head (vii) there shall be substituted the following head—

“(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;” and

(iv) after sub-paragraph (h) there shall be added the following sub-paragraphs—

“(i) a person who was in receipt of a payment of an increase of disablement pension by virtue of section 104 and regulation 17 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984(b) (increase of disablement pension for constant attendance) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to the Contributions and Benefits Act(c) immediately before the appointed day and continues to be in receipt of such payment;

(a) S.R. 1984 No. 245

(b) S.R. 1984 No. 92, to which there are amendments not relevant to these regulations

(c) See Article 3 of S.R. 1995 No. 71

- (j) a person who was in receipt of a payment of constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(a) immediately before the appointed day and continues to be in receipt of such payment;
- (k) a person who was in receipt of a payment of an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983(b) immediately before the appointed day and continues to be in receipt of such payment.”.

Amendment of the Social Security (Incapacity for Work) (General) Regulations

4.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(c) shall be amended in accordance with paragraphs (2) to (10).

(2) In regulation 6 (information required for determining capacity for work)—

(a) in paragraph (1) for “Subject to paragraph (2)” there shall be substituted “Subject to paragraphs (2) and (3)”; and

(b) for paragraph (3) there shall be substituted the following paragraph—

“(3) Paragraph (1) shall not apply in relation to a determination as to whether a person—

(a) is capable of work for the purposes of a claim for unemployment benefit; or

(b) is to be treated as incapable of work under any of regulations 10 to 14.”.

(3) In regulation 10 (certain persons with a severe condition to be treated as incapable of work)—

(a) in paragraph (1) for the words from “A person” to “day on which” there shall be substituted “Where the all work test applies, a person shall be treated as incapable of work on any day in respect of which”; and

(b) in paragraph (2)—

(i) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) that he receives, in respect of the day in question, a payment of—

(i) the highest rate of the care component of disability living allowance;

(a) S.I. 1983/883; relevant amending instrument is S.I. 1994/772

(b) S.I. 1983/686; relevant amending instrument is S.I. 1994/715

(c) S.R. 1995 No. 41

- (ii) an increase of disablement pension by virtue of section 104 and regulation 17 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984 (increase of disablement pension for constant attendance) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to the Contributions and Benefits Act;
 - (iii) a constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983; or
 - (iv) an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983;”; and
- (ii) in sub-paragraph (e) for head (vii) there shall be substituted the following head—
- “(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;”.

(4) In regulation 16(1) (person who works to be treated as capable of work) for “regulations 10 to 15 or 26” there shall be substituted “any of regulations 10 to 15 or 27”.

(5) In regulation 17(2)(a) (exempt work) for “£43” there shall be substituted “£44”.

(6) After regulation 17 there shall be inserted the following regulation—

“Person who claims unemployment benefit to be treated as capable of work

17A. Where the all work test applies, a person shall be treated as capable of work on each day in respect of which he claims unemployment benefit, notwithstanding that it has been determined that he satisfies that test or that he is, or is to be treated as, incapable of work under regulation 10 or 27, if on that day—

(a) the following conditions are satisfied, namely—

- (i) that he has done some work or undertaken a course of education or training or similar activity in preparation for work while suffering from the specific disease or bodily or mental disablement which led to that determination; and
 - (ii) that since he did so, that disease or disablement has not worsened, nor is he suffering from any further disease or bodily or mental disablement which might affect his capacity for work; or
- (b) he is able to show that he has a reasonable prospect of obtaining employment.”.

(7) In regulation 18(1)(a) (disqualification for misconduct, etc.) the words “that this disqualification shall not apply” shall be omitted.

(8) For regulation 20 there shall be substituted the following regulation—

“Adjudication officer to determine certain questions

20. Where, in relation to a determination for any purpose to which Part XIII A of the Contributions and Benefits Act applies, a question arises as to—

(a) whether a person is, or is to be treated as, capable or incapable of work in respect of any period; or

(b) whether a person is terminally ill,

that question shall be determined by an adjudication officer notwithstanding that other questions fall to be determined by another authority.”.

(9) In regulation 22(2)(b) (appointment of medical assessors) before “adviser” there shall be inserted “paid”.

(10) In regulation 28(2)(b)(iii) (conditions for treating the all work test as satisfied until assessment) for “satisfied any requirements of the Department” there shall be substituted “provided the information requested by the Department”.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 7th April 1995.

(L.S.)

L. Frew

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations amend the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 ("the Medical Evidence Regulations"), the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 ("the Transitional Regulations") and the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 ("the General Regulations").

Regulation 2 makes minor amendments to the Medical Evidence Regulations, which set out the medical evidence required for the purposes of determining incapacity for work.

Regulation 3 amends the Transitional Regulations. Regulation 3(2), (5) and (6) makes minor amendments to clarify regulations 13, 20 and 22. Regulation 3(3) and (4) makes provision for claims for incapacity benefit in cases where the period of interruption of employment and period of incapacity for work link. Regulation 3(7) makes transitional provision for entitlement to severe disablement allowance after a period engaged in training for work. Regulation 3(8) makes minor amendments to regulation 31(4) and (5) in order to clarify the provisions in respect of the cases which fall into the list of cases which are exempt from the new medical test and to add further categories of persons who are to be treated as incapable of work under the new medical test.

Regulation 4 amends the General Regulations. Regulation 4(2) and (6) relate to claims for unemployment benefit (for which there is a condition that a person be capable of work) and exclude such claims from the evidence requirements in regulation 6 and makes provision for treating claimants as capable of work when they claim unemployment benefit. Regulation 4(3) adds further categories of persons who are to be treated as incapable of work. Regulation 4(8) makes further provision as to the questions which must be determined by an adjudication officer. Regulation 4(4), (5), (7), (9) and (10) makes minor amendments to regulations 16, 17, 18, 22 and 28.

Sections 167A and 167C to 167E of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 59A of the Social Security Administration (Northern Ireland) Act 1992 and Articles 6, 9 and 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 are some of the enabling provisions under which these regulations are made and are brought into operation by virtue of the Social Security (Incapacity for Work) (1994 Order) (Commencement) Order (Northern Ireland) 1994 (S.R. 1994 No. 450 (C. 15)). Since the regulations are made before the end of a period of 6 months from the commencement of those enabling provisions, they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from reference to the Social Security Advisory Committee.