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STATUTORY RULES OF NORTHERN IRELAND

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**1995 No. 35**

**The Social Security (Incapacity Benefit)  
(Transitional) Regulations (Northern Ireland) 1995**

**PART I  
INTRODUCTION**

**Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 and shall come into operation on 13th April 1995.

(2) In these regulations—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992(1);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2);

“the Order” means the Social Security Incapacity for Work) (Northern Ireland) Order 1994;

“the appointed day” means 13th April 1995;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(3);

“the Increases for Dependants Regulations” means the Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994(4);

“pensionable age” means—

(a) the age of 65, in the case of a man; and

(b) the age of 60, in the case of a woman;

“the Unemployment, Sickness and Invalidity Benefit Regulations” means the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984(5).

(3) In these regulations, any reference to a numbered section or Schedule is to the section of, or the Schedule to, the Contributions and Benefits Act bearing that number.

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(1) 1992 c. 8

(2) 1992 c. 7

(3) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453, S.R. 1993 Nos. 217 and 375 and S.R. 1994 Nos. 345 and 456

(4) S.R. 1994 No. 485

(5) S.R. 1984 No. 245; relevant amending regulations are S.R. 1986 No. 82, S.R. 1989 No. 194, S.R. 1992 No. 146 and S.R. 1994 No. 152

## PART II

### PROVISIONS COMMON TO THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT AND INVALIDITY BENEFIT

#### Days to be treated as days of incapacity for work

2.—(1) For the purposes of a transitional award of incapacity benefit under regulations 11 and 17 and for the purposes of enabling a claim for incapacity benefit to be made on or after the appointed day 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—

- (a) days before the appointed day which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit and days specified in paragraph (2) shall be treated as having been days of incapacity for work; and
  - (b) days of entitlement to sickness benefit or invalidity benefit and days specified in paragraph (3) shall be treated as having been days of entitlement to incapacity benefit.
- (2) The specified days referred to in paragraph (1)(a) are—
- (a) any Sunday before the appointed day which—
    - (i) immediately follows a day of incapacity for work;
    - (ii) immediately precedes a day of incapacity for work;
    - (iii) does not fall within a period of disqualification by virtue of section 32(6) and the provisions in regulation 17 of the Unemployment, Sickness and Invalidity Benefit Regulations(7) (disqualification for sickness or invalidity benefit) in operation immediately before the appointed day, and
    - (iv) falls within a period of interruption of employment running at the appointed day; and
  - (b) any Sunday which immediately follows a day of incapacity for work in a period of interruption of employment which comes to an end on a Saturday.
- (3) The specified days referred to in paragraph (1)(b) are—
- (a) any Sunday which falls within the description specified in paragraph (2)(a) and (b);
  - (b) days which are deemed to be days of entitlement to sickness benefit under regulation 7A of the Unemployment, Sickness and Invalidity Benefit Regulations(8) (days deemed to be days of entitlement to sickness benefit);
  - (c) the seventh day in any week in which an employer was liable to pay a person statutory sick pay at the weekly rate specified in section 153(1)(9) (rate of payment); and
  - (d) any additional days which would have been taken into account for sickness benefit and invalidity benefit purposes had the days referred to in the provisions in regulation 7A(4) (b) of the Unemployment, Sickness and Invalidity Benefit Regulations in operation immediately before the appointed day been days in the week beginning with a Sunday which would be comprised in a fraction of a seven-day week.

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(6) Section 32 is repealed by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(7) Regulation 17 is amended by S.R. 1992 No. 146

(8) Regulation 7A is inserted by S.R. 1986 No. 82 and amended by S.R. 1989 No. 194

(9) Section 153(1) is amended by Article 10(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

### **Linking periods of interruption of employment and periods of incapacity for work**

3. Where the last day of incapacity for work in a period of interruption of employment and the first day of incapacity for work in a period of incapacity for work are not separated by a period of more than 56 days, both these periods shall be treated as one period of incapacity for work.

### **Calculation of days in a period of incapacity for work**

4. The days referred to in regulation 2 shall be taken into account for the purposes of sections 30A(4) (length of entitlement to short-term incapacity benefit), 30B(2) (period after which short-term incapacity benefit payable at higher rate) and 30B(4) (period after which incapacity benefit is payable at long-term rate)(10).

### **Claims for sickness benefit or invalidity benefit made on or after the appointed day**

5. Where a claim for sickness benefit or invalidity benefit is made on or after the appointed day in respect of a period of incapacity before the appointed day, the provisions in regulation 19 of, and paragraph 2 of Schedule 4 to, the Claims and Payments Regulations(11) (time for claiming benefit) in operation on the appointed day shall be read as if the reference to incapacity benefit were a reference to sickness benefit or invalidity benefit.

### **Interchange of sickness benefit and invalidity benefit with claims for other benefits**

6. Where a claim for sickness benefit, invalidity benefit, severe disablement allowance or maternity allowance is made in respect of a period before the appointed day, the provisions in regulation 9 of, and Part I of Schedule 1 to, the Claims and Payments Regulations(12) shall be read as if for the Table set out in Part I of Schedule 1 there were substituted the Table set out in the Schedule to these regulations.

### **Persons deemed to be incapable of work**

7.—(1) A person who immediately before the appointed day is deemed to be incapable of work by virtue of regulation 3(3)(a)(ii) of the Unemployment, Sickness and Invalidity Benefit Regulations(13) (persons deemed to be incapable of work) shall continue to be so deemed on or after the appointed day notwithstanding that the work referred to in that regulation is undertaken for 16 hours or more in the week in which it is performed.

(2) Paragraph (1) shall cease to apply—

- (a) when the period of incapacity for work comes to an end on or after the appointed day; or
- (b) when no work is undertaken for a period of not less than 57 continuous days in a period of incapacity for work.

### **Direct credit transfer**

8. Where a person had an award of sickness benefit or invalidity benefit which was payable by way of automated credit transfer in accordance with regulation 21 of the Claims and Payments Regulations(14) (direct credit transfer), and that award has effect as an award of incapacity benefit

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(10) Sections 30A and 30B are inserted by Articles 3(1) and 4(1) respectively of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(11) Regulation 19 is amended by S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453 and S.R. 1993 No. 375 and paragraph 2 of Schedule 4 is amended by S.R. 1994 No. 456

(12) Regulation 7A is inserted by S.R. 1986 No. 82 and amended by S.R. 1989 No. 194

(13) Section 153(1) is amended by Article 10(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(14) Sections 30A and 30B are inserted by Articles 3(1) and 4(1) respectively of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

under regulation 11 or 17, the award of incapacity benefit shall continue to be paid by way of automated credit transfer into the same bank or other account as the award of sickness benefit or invalidity benefit; and for this purpose, any application made and any consent given in relation to the award of sickness benefit or invalidity benefit shall be treated as made or given in relation to the transitional award of incapacity benefit.

### **Disqualification**

9. Where immediately before the appointed day a person is disqualified by virtue of regulations made under section 32 or 59 (disqualifications for sickness benefit or invalidity benefit)(15), the period of disqualification in respect of sickness benefit or invalidity benefit shall continue to have effect. and that person shall likewise be disqualified for receiving incapacity benefit for the period of disqualification which remains outstanding at the appointed day.

### **Suspension of payment of transitional awards**

10. Where the Department has made a direction to suspend payment of an award of sickness benefit or invalidity benefit in whole or in part, by virtue of regulations made under section 5(1)(o) of the Administration Act, that direction shall have effect as if it were made in respect of a transitional award of incapacity benefit and the payment of the transitional award of Incapacity Benefit shall likewise be suspended as if it were an award of sickness benefit or invalidity benefit.

## **PART III**

### **PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT**

#### **Transitional awards of short-term incapacity benefit**

11.—(1) Where a person is entitled to sickness benefit immediately before the appointed day, that award of sickness benefit shall have effect on or after the appointed day as if it were an award of short-term incapacity benefit; and such an award shall be referred to in these regulations as a transitional award of short-term incapacity benefit.

(2) A person shall cease to be entitled to a transitional award of short-term incapacity benefit under paragraph (1)—

- (a) when the period of incapacity for work comes to an end;
- (b) after 364 days of entitlement to short-term incapacity benefit in a period of incapacity for work; or
- (c) if he was entitled to sickness benefit under section 102(16) (sickness benefit in respect of industrial injury) immediately before the appointed day, when the incapacity for work is no longer as a result of a personal injury of the kind mentioned in section 94(1) (right to industrial injuries benefit),

whichever first occurs.

(3) Subject to regulations 29 to 32, a person's entitlements a transitional award of short-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIII A of the Contributions and Benefits Act(17) (incapacity for work).

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(15) Regulation 19 is amended by S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453 and S.R. 1993 No. 375 and paragraph 2 of Schedule 4 is amended by S.R. 1994 No. 456

(16) Section 102 is repealed by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(17) Part XIII A is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(4) Where a person ceases by virtue of paragraph (2)(b) to be entitled to a transitional award of short-term incapacity benefit he is, subject to him being incapable of work as determined in accordance with Part XIIA of the Contributions and Benefits Act, entitled to long-term incapacity benefit in the same period of incapacity for work on which he is under pensionable age.

### **Special provisions for persons entitled to short-term incapacity benefit on termination of employment after a period of entitlement to disability working allowance**

**12.** Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(5)(18) (days and periods of incapacity for Work) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award (incapacity benefit shall be payable at the latter rate until—

- (a) in the case where transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied; or
- (b) in any other case, the rate of short-term incapacity benefit under section 30B (rate) together with any increase under section 86A(19) (increase for adult dependents) equals or exceeds that rate.

### **Special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work**

**13.—(1)** Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(6) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied; or
  - (b) in any other case, the rate of short-term incapacity benefit under section 30B together with any increase under section 86A equals or exceeds that rate.
- (2) Where a person—
- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of not more than 57 days immediately after the appointed day, attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations (days when a person is attending a training course not to be treated as days of incapacity for work);
  - (b) had been entitled to sickness benefit 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;
  - (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course becomes entitled to incapacity benefit by virtue of section 30A (entitlement), 40 or 41 (long-term incapacity benefit for widows or widowers)(20); and
  - (d) the rate of short-term incapacity benefit is less than the rate at which a transitional award of short-term incapacity benefit would have been payable had the period of entitlement to sickness benefit referred to in sub-paragraph (b) been running at the appointed day,

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(18) Section 30C is inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(19) Section 86A is inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(20) Section 30A is inserted by Article 3(1) of, and sections 40 and 41 are substituted by paragraphs 8 and 9 respectively of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied, and in any other case, the rate of short-term incapacity benefit under section 30B together with any increase under section 86A equals or exceeds that rate.

(3) For the purpose of paragraph (2), the days referred to as days of attendance on a training course in that paragraph shall be treated as days of incapacity for work.

### **Contribution conditions for short-term incapacity benefit in respect of an industrial injury**

**14.**—(1) Where a person was entitled to sickness benefit under section 102 immediately before the appointed day, the contribution conditions as specified in paragraph 2 of Part I of Schedule 3(21) shall be taken to be satisfied—

- (a) for the purposes of entitlement to a transitional award of the higher rate of short-term incapacity benefit in respect of that industrial injury;
- (b) for the purposes of entitlement to the lower or higher rate of short-term incapacity benefit where—
  - (i) he ceased to be entitled to a transitional award as a consequence of regulation 11(2)(c), and
  - (ii) no more than 57 days after he ceased to be so entitled, he became incapable of work as a result of the personal injury in respect of which the transitional award referred to in head (i) was payable;
- (c) for the purposes of entitlement to short-term incapacity benefit by virtue of section 30C(5) or (6) where he becomes incapable of work as a result of the personal injury in respect of which a transitional award of incapacity benefit was made.

(2) Where a person is entitled to incapacity benefit by virtue of paragraph (1)(b), the rate at which incapacity benefit is payable shall be the rate at which a transitional award of short-term incapacity benefit would have been payable had he been entitled to a transitional award of short-term incapacity benefit; and these regulations shall apply as if the award of incapacity benefit were a transitional award of short-term incapacity benefit.

### **Increase in rate of a transitional award of short-term incapacity benefit for adult dependents**

**15.**—(1) Subject to paragraph (7), where at any time during a period of 56 days immediately before the appointed day—

- (a) an increase of sickness benefit under Part IV of the Contributions and Benefits Act (increases for dependents) was, payable to a person for a spouse who was an adult dependent; and
- (b) on the appointed day he becomes entitled to a transitional award of short-term incapacity benefit under regulation 11,

an amount equal to that increase shall be payable.

(2) Where in the tax year 1994-1995, the amounts specified in column (3) of paragraph 1A of Part IV, of Schedule 4(22) are increased by an order under section 132 of the Administration Act(23), the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 1A of Part IV of Schedule 4.

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(21) Paragraph 2 is amended by Articles 3(2) and 5(2) of, and paragraph 38(2) of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(22) Paragraph 1A is inserted by Article 4(5) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(23) Section 132 is amended by paragraph 41 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49)

(3) Subject to the following provisions, an increase under paragraph (1) shall continue to be payable provided that—

- (a) the spouse is residing with the beneficiary; or
- (b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) The provisions in Part I (general) and Part III (adults), except for regulation 9(1)(a) and (b) of Part 111, of the Increases for Dependants Regulations shall apply to an increase under paragraph (1) as they apply to an increase made by virtue of section 86A.

(5) A person shall cease to be entitled to an increase under paragraph (1) when no increase of sickness benefit or short-term incapacity benefit has been paid or payable for a period of at least 57 continuous days.

(6) In calculating the period referred to in paragraph (5) the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6) or regulation 13(2) shall not be taken into account.

(7) Where a person is entitled to an increase under paragraph (1) and section 30B(4) applies to him, the amount of the increase shall be equal to the rate specified in column (3) of paragraph 2 of Part IV of Schedule 4(24).

(8) In a case where paragraph (7) applied, the increase shall continue to be payable if, when the transitional award of short-term incapacity benefit is terminated, he immediately becomes entitled to long-term incapacity benefit under section 30A(5) and he continues to satisfy the conditions in section 30B(4)(a) and (b); and this regulation shall continue to apply to that increase.

(9) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increases for Dependants Regulations.

#### **Transitional provision for the treatment of earnings in respect of increases of short-term incapacity benefit for dependents**

16. Where—

- (a) on or after the appointed day no increase of short-term Incapacity Benefit is payable for—
  - (i) an adult dependent as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependents) of the Increases for Dependants Regulations, or
  - (ii) a child dependent as a consequence of section 80(3) and (4)(25) and regulation 5 of the Increases for Dependants Regulations; and
- (b) the earnings which caused there to be no payment of an increase in paragraph (a) had already resulted in no payment of an increase before the appointed day,

a payment of an increase shall be made as if the provisions in the Contributions and Benefits Act in force immediately before the appointed day continued to have the effect in respect of those earnings and as if the Order and regulations 5 and 10 of the Increase for Dependants Regulations had not come into operation.

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(24) Paragraph 2 is substituted by Article 4(5) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(25) See Article 8 of [S.R. 1994 No. 74](#)

## PART IV

### PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM INVALIDITY BENEFIT

#### **Transitional awards of long-term incapacity benefit**

**17.**—(1) Where a person is entitled to invalidity benefit immediately before the appointed day, that award of invalidity benefit shall have effect on or after the appointed day as if it were an award of long-term incapacity benefit; and such an award shall be referred to in these regulations as a transitional award of long-term incapacity benefit.

(2) Subject to regulations 29 to 32, a person's entitlement to a transitional award of long-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIII A of the Contributions and Benefits Act.

(3) A person who reaches pensionable age before the appointed day and who is entitled to a transitional award of long-term incapacity benefit under paragraph (1) shall continue to be entitled to that award on any day that he is incapable of work as determined in accordance with Part XIII A of the Contributions and Benefits Act for as long as he is not more than 5 years over pensionable age.

(4) Where a person who is incapable of work reaches pensionable age on or after the appointed day, entitlement to a transitional award of long-term incapacity benefit shall terminate on the date of his attaining pensionable age.

#### **Rate of long-term incapacity benefit in transitional cases**

**18.**—(1) Subject to paragraph (7), in transitional cases, the weekly rate long-term incapacity benefit shall consist of—

- (a) a basic rate of an amount equal to the rate of long-term incapacity benefit specified in paragraph 2A of Part I of Schedule 4(26);
- (b) where an additional pension was paid or payable with Invalidity Benefit immediately before the appointed day, an additional rate of an amount equal to the rate paid or payable as an additional pension with invalidity benefit immediately before the appointed day; and that amount shall be referred to as the additional rate;
- (c) where an invalidity allowance was payable by virtue of section 34(27) immediately before the appointed day, an amount equal to the appropriate rate specified in paragraph (2); and that amount shall be referred to as a transitional invalidity allowance.

(2) The appropriate rate referred to in paragraph (1)(c) is—

- (a) where the higher rate of invalidity allowance was payable immediately before the appointed day, £12.15;
- (b) where the middle rate of invalidity allowance was payable immediately before the appointed day, £7.60;
- (c) where the lower rate of invalidity allowance was payable immediately before the appointed day, £3.80.

(3) In a transitional case, where for any period a person is entitled to an award of long-term incapacity benefit which includes the additional rate and a transitional invalidity allowance, for that period the relevant amount shall be deducted from the appropriate weekly rate of the transitional

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(26) Paragraph 2A is inserted by Article 4(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(27) Section 34 is repealed by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994



invalidity allowance and he shall be entitled to the transitional invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(4) In paragraph (3) “the relevant amount” means an amount equal to the additional rate reduced by the amount of any reduction in the weekly rate of incapacity benefit made by virtue of regulation 22.

(5) Where the rate of long-term incapacity benefit includes a transitional invalidity allowance no increase shall become payable by virtue of regulations made under section 30B(7).

(6) In a transitional case where a person attained pensionable age before the appointed day and is not more than 5 years over that age, he shall continue to be entitled to long-term incapacity benefit payable at the rate at which the basic pension referred to in section 44(4)(28) is payable until he reaches 5 years over pensionable age.

(7) In determining the rate of long-term incapacity benefit in a transitional case where paragraph (6) applies, any increase of the following descriptions shall be disregarded—

- (a) if he is also entitled to a transitional invalidity allowance under paragraph (1)(c), any increase under section 47(1)(29) (increase of Category A retirement pension for invalidity) or 50(2)(30) (rate of Category B retirement pension for women);
- (b) any increase (for married women) under section 53(2) or (for deferred retirement) under Schedule 5;
- (c) any increase (for dependents) under section 80 (children), 83 (wife) or 85 (person with care of children)(31); and
- (d) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating) of the sums mentioned in subsection (3) of that section.

(8) For the purposes of Part IV, a transitional case means a case where a person is entitled to—

- (a) a transitional award of long-term incapacity
- (b) an award of long-term 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.

### **Special provisions for persons entitled to long-term incapacity benefit on termination of a period of entitlement to disability working allowance**

19.—(1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to incapacity benefit by virtue of section 30C(5) and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B (rate) together with any increase under section 86A equals or exceeds that rate.

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(28) Section 44(4) is amended by paragraph 11 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994; See also Article 4(3) of [S.R. 1994 No. 74](#)

(29) Section 47(1) is amended by paragraph 13 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(30) Section 50(2) is amended by paragraph 34 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993

(31) Section 80 is amended by Article 4(3) of, and sections 83 and 85 are amended by Schedule 2 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

## (2) Where a person—

- (a) who was entitled to disability working allowance by virtue of section 128(32) before the appointed day or to disability working allowance at any time in a period of not more than 56 days beginning on or after the appointed day, becomes entitled to incapacity benefit;
- (b) would have become entitled to invalidity benefit by virtue of section 33(7) or 42(33) had the Order not come into operation; and
- (c) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the days of entitlement to invalidity benefit in the period of interruption of employment which arose immediately before the period of entitlement to disability working allowance been days of entitlement to invalidity benefit in a period of interruption of employment running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of long-term incapacity benefit under section 30B together with any increase under section 86A equals or exceeds that rate.

(3) For the purposes of paragraph (2), the days of entitlement to disability working allowance referred to in that paragraph shall be treated as days of incapacity for work.

**Special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work**

**20.**—(1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to long-term incapacity benefit by virtue of section 30C(6) and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B(34) together with any increase under section 86A equals or exceeds that rate.

## (2) Where a person—

- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of not more than 57 days immediately following the appointed day attends a training course of the type specified in regulation 7(1)(t) of the Unemployment, Sickness and Invalidity Benefit Regulations;
- (b) had been entitled to invalidity benefit 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;
- (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course becomes entitled to incapacity benefit by virtue of section 30A, 40 or 41; and

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(32) Section 128 is amended by Article 12(2) and (3) of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(33) Section 33 is repealed by Schedule 2 to, and section 42 is substituted by paragraph 10 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

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

(d) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the period of entitlement to invalidity benefit referred to in sub-paragraph (b) been running at the appointed day, incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(f), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of long-term incapacity benefit under section 30B together with any increase under section 86A equals or exceeds that rate.

(3) For the purpose of paragraph (2), the days referred to as days of attendance on a training course in that paragraph shall be treated as days of incapacity for work.

### **Special provisions for persons entitled to long-term incapacity benefit in respect of an industrial injury**

**21.**—(1) Subject to paragraph (2), a person entitled to a transitional award of long-term incapacity benefit in respect of a personal injury of a kind mentioned in section 94(1) shall cease to be so entitled when the incapacity for work is no longer as a result of that injury.

(2) Where a person's entitlement to a transitional award of long-term incapacity benefit ceases as a consequence of paragraph (1) and within the period of 57 days after entitlement to that award ceases he becomes incapable for work as a result of the personal injury in respect of which the transitional award of long-term incapacity benefit was payable, he shall be entitled to benefit at the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be so entitled; and these regulations shall apply as if the award of incapacity benefit were a transitional award of long-term incapacity benefit.

### **Effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term Incapacity Benefit**

**22.**—(1) Where a person, who is a transitional case, is entitled to both—

- (a) an award of long-term incapacity benefit which includes the additional rate; and
- (b) one or more guaranteed minimum pensions, and had been entitled to an invalidity pension under section 41 (widowers) immediately before the appointed day, the weekly rate of the award of long-term incapacity benefit shall be reduced by an amount equal—

- (i) to the additional rate, or
- (ii) to the weekly rate of the pension mentioned in sub-paragraph (b) or if there is more than one such pension, their aggregate weekly rates,

whichever is the less.

(2) Where a person is entitled to an award of long-term incapacity benefit which includes the additional rate and the transitional invalidity allowance, the weekly rate of that award shall be reduced by the relevant amount being deducted from the weekly rate of the transitional invalidity allowance and he shall be entitled to that allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(3) Where for any period a person is entitled to—

- (a) an award of long-term incapacity benefit which does not include the additional rate; and
- (b) one or more guaranteed minimum pensions,

the weekly rate of the award of long-term incapacity benefit shall be reduced by deducting the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions from the weekly rate of the transitional invalidity allowance and a person shall be entitled to that allowance only if there is a balance after deduction and, if there is a balance, at a weekly rate equal to it.

- (4) Where for any period a person is entitled to—
- (a) an award of long-term incapacity benefit which includes the additional rate but does not include the transitional invalidity allowance; and
  - (b) one or more guaranteed minimum pensions; and
  - (c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7(35),

the relevant amount shall be deducted from the amount of the increase of unemployability supplement specified in paragraph 6 of Part V of Schedule 4, and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

- (5) Where for any period a person, who is a transitional case, is entitled to—
- (a) an award of long-term incapacity benefit which does not include the additional rate;
  - (b) one or more guaranteed minimum pensions; and
  - (c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7,

the increase of the unemployability supplement shall be reduced by the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

- (6) In this regulation “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and the additional rate reduced by—
- (a) the additional rate; or
  - (b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension,
- whichever is the less.

### **Increase of Category A retirement pension for incapacity**

**23.** Where a person had been entitled to invalidity allowance or transitional invalidity allowance at any time during a period of 57 days before attaining pensionable age, sections 47(36) (increase of Category A retirement pension for invalidity) and 61(37) (exclusion of increase of benefit for failure to satisfy contribution condition) shall continue to have effect as though Article 13 of, and paragraph 13 of Schedule 1 to, the Order had not come into operation and as though any reference to invalidity allowance in section 47 were a reference to transitional invalidity allowance or invalidity allowance.

### **Increase of rate of long-term incapacity benefit for dependents in transitional cases**

- 24.—**(1) Subject to paragraphs (3), (4) and (5) and regulation 25, in a transitional case where at any time during a period of 56 days immediately before the appointed day—
- (a) an increase in the rate of invalidity benefit was paid by way of a concessionary payment to compensate for non-payment of an increase for a spouse who was an adult dependent under Part IV of the Contributions and Benefits Act; or

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(35) Paragraph 3 is amended by paragraph 37(a) of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 and Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(36) Section 47 is amended by paragraph 33 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 and paragraph 13 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(37) Section 61 is amended by paragraph 17 of Schedule 1 to, and Schedule 2 to, the Social Security (incapacity for Work) (Northern Ireland) Order 1994

(b) an increase in the rate of invalidity benefit was payable for a spouse who was an adult dependent under Part IV of the Contributions and Benefits Act,

an amount equal to that increase shall be payable.

(2) Where, as a consequence of an order made under section 132 of the Administration Act in the tax year 1994-1995, the amounts specified in column (3) of paragraph 2 of Part IV of Schedule 4 are increased, the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 2 of Part IV of Schedule 4.

(3) Except as provided for in regulation 25, an increase under paragraph (1) shall continue to be payable where—

- (a) the spouse is residing with the beneficiary; or
- (b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) Subject to regulations 25 and 26 and paragraph (5), the provisions in Part I (general) and Part III (adults), except for regulation 9(1)(a) and (b) of Part III, of the Increases for Dependents Regulations shall apply to the increase as if it were an increase under section 86A(38) (increase for adult dependents).

(5) Where an increase under paragraph (1) is paid or payable to a person over pensionable age, the provisions in regulation 13 of the Increases for Dependents Regulations (increase of short-term incapacity benefit for persons over pensionable age) shall apply to the increase of long-term incapacity benefit as if that increase were an increase of short-term incapacity benefit.

(6) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increases for Dependents Regulations.

(7) A person shall cease to be entitled to an increase under paragraph (1) when either—

- (a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days; or
- (b) no increase of invalidity benefit or long-term incapacity benefit is paid or payable for at least 57 continuous days in a period of incapacity for Work.

(8) In calculating the period referred to in paragraph (7), the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6)(39) (days and periods of incapacity for work) and regulation 19(2) shall not be taken into account.

### **Further provisions for dependents in respect of the application of old saving provisions**

**25.**—(1) 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 the appointed day, the old saving provisions referred to in paragraph (2) shall continue to have effect subject to the following provisions.

(2) The old saving provisions referred to in paragraph (1) are—

- (a) regulation 18 of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(40);

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(38) Section 86A is inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(39) Section 30C is inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(40) S.R. 1977 No. 74

- (b) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations (Northern Ireland) 1984<sup>(41)</sup>;
  - (c) regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1984<sup>(42)</sup>;
  - (d) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) (Amendment) Regulations (Northern Ireland) 1989<sup>(43)</sup>;
  - (e) regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1992<sup>(44)</sup>; and
  - (f) any administrative provision which before the appointed day enabled a concessionary payment to be made to compensate for non-payment of an increase under Part IV of the Contributions and Benefits Act (increases for dependents) as a consequence of any one of the regulations referred to in sub-paragraphs (a) to (f) ceasing to apply to an increase due to attendance on a training course.
- (3) The old saving provisions referred to in paragraph (2) shall cease to have effect when—
- (a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days;
  - (b) no increase is paid for a dependent for a continuous period of at least 57 days in a period of incapacity for work;
  - (c) in a case where regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1992 applies, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days; or
  - (d) in a case where a concessionary payment was made to compensate for non-payment of an increase under Part IV of the Contributions and Benefits Act as a consequence of regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1992 ceasing to apply due to attendance on a training course, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days.
- (4) Regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1992 shall not apply in any week to a case where a dependent has earnings which exceed £81.50 per week.
- (5) Where an increase is payable as a consequence of a concessionary payment made to compensate for non-payment of an increase under Part IV of the Contributions and Benefits Act as a consequence of regulation 3 of the Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1992 ceasing to apply due to attendance on a training course, no payment shall be made in any week where a dependent has earnings which exceed £81.50 per week.

**Transitional provision for the treatment of earnings in respect of increases of long-term incapacity benefit for dependents**

**26. Where—**

- (a) on or after the appointed day—
  - (i) no increase or a reduced amount of the rate of increase of long-term incapacity benefit is payable for an adult dependent as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependents) of the Increases for Dependents Regulations, or

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<sup>(41)</sup> S.R. 1984 No. 381

<sup>(42)</sup> S.R. 1984 No. 373

<sup>(43)</sup> S.R. 1989 No. 381

<sup>(44)</sup> S.R. 1992 No. 521

- (ii) no increase of long-term incapacity benefit is payable for a child dependent as a consequence of section 80(3) and (4) and regulation 5 of the Increases for Dependents Regulations;
- (b) in a case where the increase for an adult dependent is reduced, the amount of reduction would have been less had the Order and regulations 5 and 10 of the Increases for Dependents Regulations not come into operation; and
- (c) the earnings which caused there to be no payment of an increase or a reduction of an increase in paragraph (a) had already resulted in no payment of or a reduced payment of an increase before the appointed day,

a payment of an increase, shall be made as if the provisions in the Contributions and Benefits Act in force immediately before the appointed day continued to have effect in respect of those earnings and the Order and regulations 5 and 10 of the Increases for Dependents Regulations had not come into operation.

## PART V

### MISCELLANEOUS TRANSITIONAL PROVISIONS

#### **Transition from a six day benefit to a seven day benefit**

**27.** Where a payment of an award of sickness benefit, invalidity benefit or severe disablement allowance would have been made in respect of a six day period ending on—

- (a) 13th April 1995, had the Order not come into operation, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of that day shall be 1/6th of the appropriate weekly rate of that benefit or allowance in operation on the appointed day;
- (b) 14th April 1995, had the Order not come into operation, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of 13th April 1995 and 14th April 1995 shall, in respect of each such day, be 1/6th of the appropriate weekly rate of that benefit or allowance in operation on the appointed day.

#### **Transitional provisions for an increase of severe disablement allowance for adult dependents**

**28.—**(1) Subject to paragraph (2), where an increase of severe disablement allowance is payable for an adult dependent at any time during a period of 56 days immediately before the appointed day by virtue of section 90, that increase shall continue to be payable and the provisions in regulation 24(2) to (7) shall apply to that increase as if that increase were an increase of long-term incapacity benefit in a transitional case.

(2) Where a person becomes entitled to severe disablement allowance by virtue of—

- (a) section 68(10) (treating days of entitlement to disability working allowance as having been days on which a person was both incapable for work and disabled); or
- (b) section 68(10A)(45) (treating days engaged in training as having been days on which a person was both incapable for work and disabled),

and an increase had been payable under section 90 or paragraph (1) when he was last entitled to that allowance, he shall be entitled to an amount equal to the amount of an increase payable under paragraph (1) if, by reason only of the fact that there is no child for whom he is entitled to an increase under section 80, he would not be entitled to an increase for an adult dependent under the Increases

for Dependants Regulations; and the amount payable shall be treated as if it were an increase under paragraph (1).

## PART VI

### PROVISIONS FOR THE TRANSITION TO THE NEW TESTS OF INCAPACITY FOR WORK

#### **Transitional awards of incapacity benefit**

**29.** A person's entitlement to a transitional award of incapacity benefit shall, except as provided in regulation 31 be subject to him satisfying the tests of incapacity for work under Part XIIIA(46) of the Contributions and Benefits Act (incapacity for work).

#### **Transitional provision in respect of other benefits**

**30.** A person's continued enjoyment on or after the appointed day of severe disablement allowance or any other advantage under any provision for the purposes of which Part XIIIA of the Contributions and Benefits Act applies shall, except as provided in regulation 31, be subject to satisfying the tests of incapacity for work under that Part of the Contributions and Benefits Act.

#### **Application of the new tests of incapacity for work**

**31.—(1)** Where it has been determined that a person is incapable of work for any purpose of the Contributions and Benefits Act immediately before the appointed day and on or after the appointed day the all work test applies to him, he shall not be required to satisfy or be treated as having satisfied the condition of entitlement that he is incapable of work in accordance with that test until he has been assessed as to incapacity for work in accordance with regulations made under section 167C(47) (the all work test) or until it is determined that he falls within one of the cases mentioned in paragraph (5), so long as he satisfies the condition in paragraph (2).

(2) The condition referred to in paragraph (1) is that, in respect of each day, a person shall be required to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(48) (which prescribe the form of doctor's statement or other evidence in each case).

(3) Subject to paragraph (4), a person who falls within one of the cases mentioned in paragraph (5) shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 167C.

(4) Where it is determined that a person falls within one of the cases mentioned in sub-paragraphs (a) to (c) of paragraph (5) and sub-paragraphs (d) to (h) of that paragraph do not apply, that person shall continue to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976; and provided that such evidence is furnished he shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 167C.

(5) The cases referred to in paragraph (3) are—

(a) a person who—

(i) was entitled to invalidity benefit on 1st December 1993 and on 12th April 1995;

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(46) Part XIIIA is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(47) Section 167C is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(48) S.R. 1976 No. 175, as amended by S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1991 No. 488, S.R. 1992 No. 83 and S.R. 1994 No. 468



- (ii) between the period beginning on 1st December 1993 and ending on 13th April 1995, was not capable of work for that period or for two or more periods not separated by a period of more than 56 continuous days, and
  - (iii) is aged 58 or over on the appointed day;
- (b) a person who—
  - (i) was entitled to income support or housing benefit on 1st December 1993;
  - (ii) was incapable of work for a period of not less than 28 weeks immediately before 1st December 1993;
  - (iii) had an applicable amount which included the disability premium on account of his own incapacity on 12th April 1995;
  - (iv) between the period beginning on 1st December 1993 and ending on 13th April 1995, was incapable of work for that period or for two or more periods not separated by a period of more than 56 continuous days, and
  - (v) is aged 58 or over on the appointed day;
- (c) a person who was in receipt of a payment of an award of severe disablement allowance under section 68(49) immediately before the appointed day;
- (d) a person who was in receipt of a payment of an award of the highest rate of the care component of disability living allowance immediately before the appointed day and continues to be in receipt of such payment;
- (e) a person who is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (f) a person who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(50);
- (g) a person suffering from one of the following conditions—
  - (i) tetraplegia;
  - (ii) persistent vegetative state;
  - (iii) dementia;
  - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (h) where a doctor approved by the Department has certified that a person is suffering from any of the following conditions—
  - (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
  - (ii) a severe and progressive neurological or muscle wasting disease;
  - (iii) an active and progressive form of inflammatory polyarthritis;
  - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
  - (v) dense paralysis of the upper limb, trunk and lower limb on one, side of the body;

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(49) Section 68 is amended by S.R. 1994 No. 370 and Article 11 of, and paragraph 18 of Schedule 1 to, and Schedule 2 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(50) S.I.1972/1265 (N.I. 14)

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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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- (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
- (vii) a severe and progressive immune deficiency state characterised by the occurrence of opportunistic infections or tumour formation;
- (viii) a severe mental illness.

**Treatment of days of incapacity arising before the appointed day**

**32.** The days of incapacity for work before the appointed day and the days which are treated as days of incapacity for work in accordance with regulation 2 shall be taken into account for the purposes of calculating the days of incapacity referred to in section 167B(3) and (4)(**51**) (period after all work test applies).

Sealed with the Official Seal of the Department of Health and Social Services on

14th February

*W.G. Purdy*  
Assistant Secretary