



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### [<sup>F1</sup>PART XIII

#### INCAPACITY FOR WORK]

##### Textual Amendments

- F1** Pt. XIII (ss. 167A-167C) inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by [S.I. 1994/1898 \(N.I. 12\)](#), [arts. 7, 8](#); [S.R. 1994/450 \(N.I. 12\)](#), art. 2(b), Sch. Pt. II

##### Modifications etc. (not altering text)

- C1** Pt. XIII (ss. 167A-167C) applied (13.4.1995) by [S.R. 1995/35](#), [regs. 29, 30](#)
- C2** Pt. XIII (ss. 167A-167C) applied (with modifications) (5.2.1996 for the purpose of authorising the making of regulations and 7.10.1996 otherwise) by [S.I. 1995/2705 \(N.I. 15\)](#), art. 23, [Sch. 1 para. 2](#); [S.R. 1996/26](#), art. 2(d), [Sch.](#); [S.R. 1996/401](#), [art. 2](#)

#### 167A [<sup>F2</sup> Test of incapacity for work.]

- (1) For the purposes of this Act, save as otherwise expressly provided, whether a person is capable or incapable of work shall be determined in accordance with this Part of this Act.
- (2) Regulations may make provision as to—
  - (a) the information or evidence required for the purpose of determining whether a person is capable or incapable of work; and
  - (b) the manner in which that information or evidence is to be provided;

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

*Status: Point in time view as at 08/04/2003.*

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- [<sup>F3</sup>(2A) In subsection (2)(a) above the reference to such information or evidence as is there mentioned includes information or evidence capable of being used for assisting or encouraging the person in question to obtain work or enhance his prospects of obtaining it.]
- (3) Regulations may provide that in any case where [<sup>F4</sup>it falls to be determined] whether a person is capable of work—
- (a) he may be called to attend for such medical examination as may be required in accordance with regulations; and
  - (b) if he fails without good cause to attend for or submit himself to such examination, he shall be treated as capable of work.
- (4) Regulations may prescribe for the purposes of this section—
- (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
  - (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.
- [<sup>F5</sup>(5) All information supplied in pursuance of this section shall be taken for all purposes to be information relating to social security.]

#### Textual Amendments

- F2** Pt. XIII (ss. 167A-167C) inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 7, 8; S.R. 1994/450, art. 2(b), **Sch. Pt. II**
- F3** S. 167A(2A) inserted (1.12.1999 for specified purposes and 16.12.1999 otherwise) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(c), 67, **Sch. 8 para. 22(2)**; S.R. 1999/494, art. 2(2)(b)
- F4** Words in s. 167A(3) substituted (1.12.1999 for specified purposes and 3.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(c), 67, **Sch. 8 para. 22(3)**; S.R. 1999/494, art. 2(2)(a)
- F5** S. 167A(5) added (1.12.1999 for specified purposes and 16.12.1999 otherwise) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(c), 67, **Sch. 8 para. 22(4)**; S.R. 1999/494, art. 2(2)(b)

#### [<sup>F6</sup>167B The own occupation test.

- (1) Where a person has been engaged in remunerative work for more than 8 weeks in the 21 weeks immediately preceding the day with respect to which it falls to be determined whether he is or was incapable of work, [<sup>F7</sup>the own occupation test is applicable in his case.].
- (2) The own occupation test is whether he is incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged.
- (3) Where for any purpose of this Act it is determined in relation to a person—
  - (a) that the test applicable with respect to any day is the own occupation test; and
  - (b) that he is on that test incapable of work,
 that test remains applicable in his case until the end of the spell of incapacity beginning with that day or, as the case may be, in which that day falls, or until the 197th day of incapacity for work in that spell, whichever is the earlier.

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

- (4) For the purposes of subsection (3) above a day of incapacity for work means a day—
- (a) with respect to which it has been determined for any purpose of this Act that the person in question was incapable of work; or
  - (b) in respect of which he was entitled to statutory sick pay; or
  - (c) in the case of a woman, which falls within the maternity allowance period; or
  - (d) which in accordance with regulations is to be treated for those purposes as a day of incapacity for work.
- (5) Any provision of this Act apart from subsection (4) above under or by virtue of which a day is or is not to be treated for any purpose as a day of incapacity for work shall be disregarded for the purposes of this section.
- (6) Provision may be made by regulations defining for the purposes of this section what is meant by “remunerative work”.

The regulations may, in particular, provide—

- (a) for “remunerative work” to be defined by reference to the number of hours worked per week; and
  - (b) for training of any prescribed description to be treated as if it were remunerative work.
- (7) Provision may be made by regulations as to the application of this section in cases where a person engages in more than one occupation or in different kinds of work.
- (8) Regulations may provide that subsection (3) above shall have effect as if—
- (a) the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
  - (b) for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.]

#### Textual Amendments

- F6** Pt. XIII (ss. 167A-167C) inserted (21.11.1994) for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 7, 8; S.R. 1994/450, art. 2, Sch. Pt. II
- F7** Words in s. 167B(1) substituted (3.4.2000) by S.I. 1999/3147 (N.I. 11), art. 67, Sch. 8 para. 23; S.R. 1999/494, art. 2(2)(a)

#### Modifications etc. (not altering text)

- C3** S. 167B(3) modified (13.4.1995) by S.R. 1995/41, reg. 13(4) (with reg. 3)
- C4** S. 167B(3)(4) modified (13.4.1995) by S.R. 1995/35, reg. 32

#### [<sup>F8</sup>167C Personal capability assessments.

- (1) Where the own occupation test is not applicable, or has ceased to apply, in the case of a person, the question whether the person is capable or incapable of work shall be determined in accordance with a personal capability assessment.

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- (2) Provision shall be made by regulations—
- (a) defining a personal capability assessment by reference to the extent to which a person who has some specific disease or bodily or mental disablement is capable or incapable of performing such activities as may be prescribed;
  - (b) as to the manner of assessing whether a person is, in accordance with a personal capability assessment, incapable of work.
- (3) Regulations may provide that, in any prescribed circumstances, a person to whom subsection (1) above applies shall, if the prescribed conditions are met, be treated as incapable of work in accordance with a personal capability assessment until such time as—
- (a) such an assessment has been carried out in his case, or
  - (b) he falls to be treated as capable of work in accordance with regulations under section 167A(2) or (3) above or section 167E below.
- The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.
- (4) Except in prescribed circumstances, a personal capability assessment carried out in the case of a person before the time when subsection (1) above applies to him shall be as effective for the purposes of that subsection as one carried out thereafter.
- (5) The Department may, in the case of a person who for any purpose of this Act has been determined to be incapable of work in accordance with a personal capability assessment (including one carried out by virtue of this subsection), require the question whether the person is capable or incapable of work to be determined afresh in accordance with a further personal capability assessment.]

#### Textual Amendments

**F8** S. 167C substituted (1.12.1999 for specified purposes and 3.4.2000 otherwise) by S.I. 1999/3147 (N.I. 11), arts. 1(5)(b), 58; S.R. 1999/494, art. 2(2)(a)

#### <sup>F9</sup>167D Incapacity for work: persons to be treated as incapable or capable of work.

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

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

#### Textual Amendments

**F9** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), ss. 6, 8; S.R. 1994/450, art. 2, Sch. Pt. II

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#### Modifications etc. (not altering text)

C5 S. 167D modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), arts. 1(3), 73(7)

#### [<sup>F10</sup>167E Incapacity for work: disqualification, etc.

- (1) Regulations may provide for disqualifying a person for receiving any benefit, allowance or other advantage under any provision for the purposes of which this Part of this Act applies, or, in such cases as may be prescribed, provide that a person shall be treated as capable of work, if—
  - (a) he has become incapable of work through his own misconduct;
  - (b) he fails without good cause to attend for or submit himself to such medical or other treatment as may be required in accordance with the regulations; or
  - (c) he fails without good cause to observe any prescribed rules of behaviour.
- (2) Regulations shall provide that any such disqualification shall be, or as the case may be that the person shall be treated as capable of work, for such period not exceeding 6 weeks as may be determined in accordance with [<sup>F11</sup>Chapter II of Part II of the Social Security (Northern Ireland) Order 1998]].
- (3) Regulations may prescribe for the purposes of this section—
  - (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
  - (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

#### Textual Amendments

**F10** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 6, 8; S.R. 1994/450, art. 2, Sch. Pt. II

**F11** Words in s. 167E(2) substituted (6.9.1999 for specified purposes, otherwise *prosp.*) by S.I. 1998/1506 (N.I. 10), arts. 1(2), 78(1), Sch. 6 para. 57; S.R. 1999/371, art. 2(b), Sch. 1 (with arts. 4, 18)

#### [<sup>F12</sup>167F Incapacity for work: work as councillor to be disregarded.

- (1) In determining whether a person is capable or incapable of work, there shall be disregarded any work which that person has undertaken as a councillor.
- (2) For this purpose “councillor” means a member of a district council.
- (3) The reference in subsection (1) above to the work which a person undertakes as a councillor shall be taken to include any work which he undertakes as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.
- (4) In making any such determination as is mentioned in subsection (1) above a person shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
  - (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but

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- (b) would not have been so treated apart from this subsection.

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

#### Textual Amendments

**F12** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 6, 8; S.R. 1994/450, art. 2, **Sch. Pt. II**

#### [<sup>F13</sup>167G] Incapacity for work: supplementary provisions.

- (1) The provisions of this Part of this Act do not apply—
- (a) for the purposes of Part V of this Act (benefit for industrial injuries: see section 94(6) above);
  - (b) for the purposes of Part XI of this Act (statutory sick pay: see section 147(4) above); or
  - (c) for such other purposes as may be prescribed.
- (2) In this Part of this Act—
- “prescribed” means specified in or determined in accordance with regulations;
- and
- “week” means any period of 7 days.]

#### Textual Amendments

**F13** Ss. 167D-167G inserted (21.11.1994 for the purpose only of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), arts. 6, 8; S.R. 1994/450, art. 2, **Sch. Pt. II**

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