STATUTORY RULES OF NORTHERN IRELAND

2002 No. 86

SOCIAL SECURITY

The Social Security (Incapacity) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002

Made - - - - 7th March 2002
Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by sections 167D and 171(1) to (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), Article 6(1) and (6) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**2**) and Article 75(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**3**), and now vested in it(**4**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Incapacity) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002 and shall come into operation—

(a) for the purposes of this regulation and regulation 3, on 5th April 2002; and

(b) for all other purposes, on 8th April 2002.

(2) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Assembly.

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

2.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**6**) shall be amended in accordance with paragraphs (2) and (3).

(**1**) 1992 c. 7; section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12)) and section 171(2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Order 1999 (S.I. 1999/671)
(**2**) S.I. 1994/1898 (N.I. 12)
(**3**) S.I. 1999/3147 (N.I. 11)
(**4**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**5**) 1954 c. 33 (N.I.)
(**6**) S.R. 1995 No. 41; relevant amending regulations are S.R. 1999 No. 428, S.R. 2000 No. 109 and S.R. 2001 No. 316

(2) In regulation 10A(**7**) (certain persons participating in approved work to be treated as incapable of work), in paragraph (4)—

(a) in the definition of "approved work" for the words from "by the Department" to the end there shall be substituted "with an employer in respect of him by an officer of, or a person providing services to, the Department who has been authorised by the Department for the purpose"; and

(b) in the definition of "trial basis" for the words from "between" to the end there shall be substituted

"between—

(a) the person;

(b) an officer of, or a person providing services to, the Department who has been authorised by the Department for the purpose; and

(c) an employer,

in relation to the approved work.".

(3) In regulation 17(**8**) (exempt work), subject to regulation 4(1)—

(a) in paragraph (1) for sub-paragraph (*a*) there shall be substituted the following sub-paragraph—

"(a) work in respect of which the required notice is given, and—

(i) in respect of which the earnings in any week do not exceed £20·00; or

(ii) which is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or

(iii) which is supervised by a person employed by a public authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities; or

(iv) to which paragraph (1A) applies;";

(b) after paragraph (1) there shall be inserted the following paragraphs—

"(1A) This paragraph applies in the case of a person whose circumstances are specified—

(a) in sub-paragraph (*a*) of paragraph (1B), to work which is undertaken by that person during the period specified in sub-paragraph (*b*) of that paragraph;

(b) in sub-paragraph (*a*) of paragraph (1C), to work which is undertaken by that person during the period specified in sub-paragraph (*b*) of that paragraph; and

(c) in sub-paragraph (*a*) of paragraph (1D), to work which is undertaken by that person during the period specified in sub-paragraph (*b*) of that paragraph.

(1B) For the purposes of paragraph (1A)(*a*)—

(a) the specified circumstances are where—

(i) no work to which paragraph (1A) applies has previously been undertaken by that person; or

(ii) since the beginning of the last period during which any work to which that paragraph applies was previously undertaken by him, the person

(**7**) Regulation 10A was inserted by regulation 7(3) of S.R. 2000 No. 109
(**8**) Regulation 17 was amended by Article 8(3) of S.R. 1999 No. 428 (C. 32) and regulation 4 of S.R. 2001 No. 316

has ceased to be entitled, throughout a period exceeding 8 continuous weeks, to a relevant benefit; and

(b) the specified period is the period of 26 weeks beginning with the first day on which the work is undertaken.

(1C) For the purposes of paragraph (1A)(*b*)—

(a) the specified circumstances are where—

(i) work to which paragraph (1A) applies has previously been undertaken by that person during a period specified in paragraph (1B)(*b*); and

(ii) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (*b*), he is likely to improve his capacity to engage in full-time work; and

(b) the specified period is the period of 26 weeks beginning immediately after the end of the period specified in paragraph (1B)(*b*).

(1D) For the purposes of paragraph (1A)(*c*) above—

(a) the specified circumstances are where—

(i) work to which paragraph (1A) applies has previously been undertaken by that person;

(ii) not less than 52 weeks have elapsed since the end of the period specified in paragraph (1B)(*b*) or (1C)(*b*) or in sub-paragraph (*b*) during which such work was last undertaken by him;

(iii) head (ii) of paragraph (1B)(*a*) does not apply in his case; and

(iv) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (*b*), he is likely to improve his capacity to engage in full-time work; and

(b) the specified period is the period of 52 weeks which begins with the first day on which the work is undertaken.

(1E) In this regulation—

"appropriate evidence" means, in relation to any work—

(a) evidence from an officer of, or person providing services to, the Department who is authorised by the Department for the purpose; and

(b) evidence (if any) from any other person (including the person undertaking the work),

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

"relevant benefit" means—

(a) incapacity benefit, severe disablement allowance, income support or housing benefit under the Contributions and Benefits Act; or

(b) credits under regulations under section 22(5)(**9**) of that Act,

in connection with the entitlement to which the question of the person's capacity or incapacity for work arises under that Act;

"the required notice" means, in relation to work referred to in any of heads (i) to (iv) of paragraph (1)(*a*), notice to the effect that the person is undertaking, or is

(**9**) Section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))