STATUTORY RULES OF NORTHERN IRELAND

2000 No. 404

SOCIAL SECURITY

The Social Security (Incapacity Benefit) (Miscellaneous Amendments) Regulations (Northern Ireland) 2000

Made - - - -	*21st December 2000*
Approved by resolution of the Assembly on - - - -	*21st May 2001*
Coming into operation	*6th April 2001*

The Department for Social Development, in exercise of the powers conferred by sections 30A(2A), (6) and (7), 30C(3), 30DD and 171(2) to (4) of, and paragraph 2(8) of Schedule 3 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Article 75(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**2**), and now vested in it(**3**), 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, Articles 59 to 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Incapacity Benefit) (Miscellaneous Amendments) Regulations (Northern Ireland) 2000 and shall come into operation on 6th April 2001.

(2) In these Regulations "the principal Regulations" means the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994(**4**).

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

(**1**) 1992 c. 7; section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12)) and amended by Article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, section 30DD was inserted by Article 60 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, section 171(2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 2(8) of Schedule 3 was added by Article 59(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**2**) S.I. 1999/3147 (N.I. 11)

(**3**) *See* Article 8(*b*) of S.R. 1999 No. 481

(**4**) S.R. 1994 No. 461; relevant amending regulations are S.R. 1997 No. 483, S.R. 1999 No. 346 and S.R. 2000 No. 109

(**5**) 1954 c. 33 (N.I.)

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended in accordance with paragraphs (2) to (5).

(2) After regulation 1A(**6**) (disapplication of section 1(1A) of the Administration Act) there shall be inserted the following Part—

"Part IA

Contributions Conditions: Supplementary Provisions

Relaxation of the first contribution condition in certain cases

1B.—(1) For the purposes of paragraph 2(2)(*a*) of Schedule 3(**7**) (first contribution condition) a person who satisfies any of the conditions referred to in paragraph (2) shall be taken to satisfy the first contribution condition if—

(a) he paid contributions of a relevant class before the relevant time in respect of any one year; and

(b) the earnings factor is derived—

(i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25, or

(ii) from Class 2 contributions multiplied by 25.

(2) The conditions referred to in paragraph (1) are that—

(a) he was a person who, in the relevant tax year before the first day of incapacity for work, was entitled to invalid care allowance under section 70(**8**) or would have been in receipt of invalid care allowance but for the provisions of regulation 4 of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**9**);

(b) immediately before the first day of incapacity for work, he was a person—

(i) who had been engaged in remunerative employment for a period of more than 2 years, and

(ii) who was entitled to a disability working allowance or disabled person's tax credit, as the case may be, under section 128(**10**) throughout that period; or

(c) he is, on the first day of his incapacity for work, a person who had received incapacity benefit in the last complete tax year immediately preceding the relevant benefit year in which he again becomes entitled to that benefit.".

(3) In regulation 3(1)(**11**) (days not to be treated as days of incapacity for work) after sub-paragraph (*a*) there shall be inserted the following sub-paragraph—

"(aa) a day which is, for the purposes of section 30A(2A)(*c*)(**12**) (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;".

(**6**) Regulation 1A was inserted by regulation 13 of S.R. 1997 No. 483
(**7**) Paragraph 2(2)(*a*) of Schedule 3 was substituted by Article 59(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**8**) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370
(**9**) S.R. 1979 No. 242; relevant amending regulations are S.R. 1984 No. 317, S.R. 1992 Nos. 6 and 557, S.R. 1995 No. 150 and S.R. 1996 Nos. 289 and 601
(**10**) Section 128 was amended by Article 12 of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and sections 1 and 14 of the Tax Credits Act 1999 (c. 10)
(**11**) Regulation 3 was amended by regulation 2 of S.R. 1999 No. 346 and regulation 5 of S.R. 2000 No. 109
(**12**) Subsection (2A) was inserted by Article 61(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(4) After regulation 3 there shall be inserted the following regulation—

"**Days to be treated as days of incapacity for work**

3A. For the purposes of incapacity benefit for persons incapacitated in youth under section 30A(2A), any day in respect of which a person is entitled to statutory sick pay immediately before the relevant day shall be treated as a day of incapacity for work.".

(5) After Part III (rate of incapacity benefit) there shall be added the following Parts—

"Part IV

Additional Conditions for Persons Incapacitated in Youth

General

13. This Part of these Regulations applies to persons incapacitated in youth in accordance with section 30A(1)(*b*) and (2A)(**13**).

Age exception—persons aged 20 and under 25

14.—(1) For the purposes of section 30A(2A)(*b*) (prescribed cases in relation to persons aged under 25 and above the age 20 limit), a person falls within a prescribed case if he satisfies the conditions specified in the following paragraphs.

(2) The conditions referred to in paragraph (1) are that he is a person who—

(a) registered on a course of—

(i) full-time advanced or secondary education, or

(ii) vocational or work-based training,

at least 3 months before he attained the age of 20; and

(b) not more than one academic term immediately after the registration referred to in sub-paragraph (*a*), attended one or more such course of education or training as is mentioned in that sub-paragraph in the period referred to in paragraph (3).

(3) The period mentioned in paragraph (2)(*b*) is a period which—

(a) began on or before a day at least 3 months before the day on which he attained the age of 20; and

(b) ended on a day—

(i) immediately before the relevant day, or

(ii) falling within one of the last two complete tax years before the benefit year which would have governed a claim for incapacity benefit under section 30A(1)(*a*) had he been entitled to that benefit,

whichever is the later.

(4) For the purposes of this regulation a person is attending a course of education or training on any day on which the course or training is interrupted by an illness or domestic emergency.

(5) In this regulation—

"advanced education" means full-time education for the purposes of—

(**13**) Subsection (1) was amended by Article 61(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a national diploma of the Business and Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of sixth year studies;

"course of education" means a course of advanced education or secondary education;

"full-time" includes part-time where the disability from which a person suffers prevents him from attending a full-time course;

"relevant day" has the same meaning as in section 30A(1), that is to say, the day—

(a) in respect of which a person is entitled to claim incapacity benefit;

(b) which falls on any day immediately after a period of 196 consecutive days of incapacity for work; and

(c) which forms part of a period of incapacity for work;

"secondary education" means a full-time course of education below a course of advanced education—

(a) by attendance at a recognised educational establishment within the meaning of section 143(1); or

(b) elsewhere than at a recognised educational establishment, where the Department is satisfied that the education is equivalent to that given in a recognised educational establishment;

"training" has the same meaning as vocational training or work-based training;

"vocational training" means training for work as defined in regulation 2 for the purposes of section 30C(6) and includes any training, instruction or tuition (of which the primary purpose is the teaching of occupational or vocational skills) received on a course provided, for persons suffering mental or physical disability, by a person recognised by the Department;

"work-based training" means vocational training undertaken on the premises of an employer.".

Conditions relating to residence or presence

15.—(1) The prescribed conditions for the purposes of section 30A(2A)(*d*) as to residence or presence in Northern Ireland in relation to any person on the relevant day shall be that on that day—

(a) he is ordinarily resident in Northern Ireland;

(b) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(**14**) or he is a person to whom paragraph (5) applies;

(c) he is present in Northern Ireland; and

(d) he has been present in Northern Ireland for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day.

(2) Where the relevant day falls within a period in which a person—

(**14**) 1999 c. 33

(a) receives tax-free emoluments; or

(b) is the spouse of a person who receives tax-free emoluments,

that person shall not be regarded as present in Northern Ireland unless that period is immediately preceded by a period of 4 years during which he was present in Northern Ireland for a period of not less than 156 weeks in aggregate.

(3) For the purposes of paragraph (2) "tax-free emoluments" means emoluments which are exempt from tax under any of the provisions listed in regulation 11(1) of the Child Benefit (General) Regulations (Northern Ireland) 1979(**15**).

(4) In determining whether a person satisfies paragraph (1), where a person is absent from Northern Ireland by reason only of the fact that—

(a) he is abroad in his capacity as a serving member of the forces, or he is the spouse, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a serving member of the forces abroad;

(b) he is in employment prescribed for the purposes of section 120 of the Social Security Contributions and Benefits Act 1992(**16**) in connection with continental shelf operations; or

(c) he is abroad in his capacity as an airman or mariner within the meaning of regulation 80 or 84 respectively of the Social Security (Contributions) Regulations (Northern Ireland) 1979(**17**),

any day or period of absence shall be treated as a day on which, or period during which, the person is resident or present, as the case may be, in Northern Ireland; and for the purposes of this paragraph "serving member of the forces" has the same meaning as in regulation 1(2) of those Regulations.

(5) This paragraph applies where a person is—

(a) a member of a family of a national of a State contracting party to the Agreement of the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(**18**);

(b) a person who is lawfully working in Northern Ireland and is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam(**19**) amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts(**20**) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;

(c) a person who is a member of a family of, and living with, a person specified in sub-paragraph (*b*); or

(d) a person who has been given leave to enter, or remain in, the United Kingdom by the secretary of State upon an undertaking by another person or persons, pursuant to the immigration rules within the meaning of the Immigration Act 1971(**21**), to be responsible for his maintenance and accommodation.

(6) A person shall be treated as having satisfied the residence or presence conditions on any subsequent day of incapacity for work falling within the same period of incapacity for work where the

(**15**) S.R. 1979 No. 5; regulation 11(1) was amended by regulation 3(2)(*a*) of S.R. 1996 No. 288
(**16**) 1992 c. 4; section 120 was amended by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 26 of Schedule 3 and paragraph 8 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)
(**17**) S.R. 1979 No. 186, to which there are amendments not relevant to these regulations
(**18**) O.J. No. L1, 3.1.1994, p. 572
(**19**) Article 310 EC (ex Article 238)
(**20**) O.J. No. C340, 10.11.1997, p. 1
(**21**) 1971 c. 77