STATUTORY RULES OF NORTHERN IRELAND

1998 No. 324

HOUSING; RATES; SOCIAL SECURITY; STATUTORY SICK PAY

The Social Security (Welfare to Work) Regulations (Northern Ireland) 1998

Made - - - - 15th September 1998

Coming into operation 5th October 1998

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 30C(4)(*b*), 47(6), 68(11)(*b*)(i), (*ca*) and (*cc*), 122(1)(*a*) and (*d*), 131(1), 167A, 167C, 167D, 167E and 171(3) and (4) of, and paragraph 1 of Schedule 11 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), Articles 6 and 14 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**2**) and Article 6(5) of the Jobseekers (Northern Ireland) Order 1995(**3**) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(**4**) in so far as regulation 9 is concerned, and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(**5**), hereby makes the following Regulations:

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Welfare to Work) Regulations (Northern Ireland) 1998 and shall come into operation on 5th October 1998.

(**1**) 1992 c. 7; section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)); section 68(11)(*ca*) and (*cb*) was substituted for section 68(11)(*c*) by paragraph 18(3) of Schedule 1 to that Order; section 68(11)(*cc*) was inserted by Article 11(3) of that Order; sections 167A and 167C were inserted by Article 7 of that Order and sections 167D and 167E were inserted by Article 8(1) of that Order

(**2**) S.I. 1994/1898 (N.I. 12)

(**3**) S.I. 1995/2705 (N.I. 15)

(**4**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; subsection (6A) was inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8))

(**5**) *See* section 150(1)(*b*) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

(2) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to a Measure of the Assembly.

Part II

Incapacity Benefit Amendments

Amendment of the Social Security (Incapacity Benefit) Regulations

2. After regulation 4 of the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994(**7**) (night workers) there shall be inserted the following regulation—

"**Calculating periods of incapacity for work for welfare to work beneficiaries**

4A. For the purposes of incapacity benefit, in the case of a person who has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**8**) to be a welfare to work beneficiary, section 30C(1)(*c*) (any two periods of incapacity for work not separated by a period of more than 8 weeks to be treated as one period of incapacity for work) shall have effect as if for the reference to 8 weeks there were substituted a reference to 52 weeks.".

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

3.—(1) The Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(**9**) shall be amended in accordance with paragraphs (2) to (7).

(2) After regulation 17A(**10**) (awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link) there shall be inserted the following regulation—

"**Calculating periods of incapacity for work for welfare to work beneficiaries in long-term incapacity benefit transitional cases**

17B. For the purposes of transitional cases, where a person, to whom regulation 17(1) or 17A applies, has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 to have become a welfare to work beneficiary, section 30C(1)(*c*) (any two periods of incapacity for work not separated by a period of more than 8 weeks to be treated as one period of incapacity for work) shall have effect as if for the reference to 8 weeks there were substituted a reference to 52 weeks.".

(3) In regulation 23 (increase of Category A retirement pension for incapacity)—

(a) the existing provision shall be numbered as paragraph (1); and

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

"(2) In the case of a person who is a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995, the reference in paragraph (1) to a period of 57 days shall be treated as a reference to a period of 52 weeks.".

(**6**) 1954 c. 33 (N.I.)
(**7**) S.R. 1994 No. 461, to which there are amendments not relevant to these regulations
(**8**) S.R. 1995 No. 41; regulation 13A is inserted by regulation 4(2) of these regulations
(**9**) S.R. 1995 No. 35; relevant amending regulations are S.R. 1995 No. 149 and S.R. 1996 No. 601
(**10**) Regulation 17A was inserted by regulation 3(3) of S.R. 1995 No. 149

(4) In regulation 24 (increase of rate of long-term incapacity benefit for dependants in transitional cases)—

(a) in paragraph (7) for the words "A person" there shall be substituted the words "Except in a case where paragraph (7A) applies, a person"; and

(b) after paragraph (7) there shall be inserted the following paragraph—

"(7A) The exception referred to in paragraph (7) applies only where the person—

(a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995; and

(b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of that regulation.".

(5) In regulation 25 (further provisions for dependants in respect of the application of old saving provisions)—

(a) in paragraph (3) at the beginning there shall be inserted "Except in a case where paragraph (3A) applies,"; and

(b) after paragraph (3) there shall be inserted the following paragraph—

"(3A) The exception referred to in paragraph (3) applies only where the person—

(a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995; and

(b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of that regulation.".

(6) In regulation 28(1) (transitional provisions for an increase of severe disablement allowance for adult dependants) for "regulation 24(2) to (7)" there shall be substituted "regulation 24(2) to (7A)".

(7) In regulation 31(5)(*c*)(**11**) (application of the new tests of incapacity for work) after "spell" there shall be inserted "or period".

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

4.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**12**) shall be amended in accordance with paragraphs (2) and (3).

(2) After regulation 13 (person receiving certain regular treatment) there shall be inserted the following regulation—

"**Welfare to work beneficiary**

13A.—(1) Subject to paragraph (3), a person is a "welfare to work beneficiary" on any day in a linking term, where he—

(a) was incapable of work for a period of incapacity for work of more than 196 days in his immediate past period of incapacity for work;

(b) ceased to be entitled to benefit at the end of that immediate past period of incapacity for work on a day which falls on or after 5th October 1998;

(c) became engaged in remunerative work within one week of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; and

(**11**) Regulation 31 was amended by regulation 3(8) of S.R. 1995 No. 149 and regulation 3(5) of S.R. 1996 No. 601

(**12**) S.R. 1995 No. 41; relevant amending regulations are S.R. 1995 No. 149, S.R. 1996 No. 601, S.R. 1997 No. 174 and S.R. 1998 No. 54

(d) either—

(i) gave notice to the Department, within a period of one month after so ceasing to be entitled to that benefit, that he had been engaged in renumerative work within one week from the end of that past period of incapacity for work, or

(ii) had successfully appealed against an assessment made in respect of the all work test or a determination in respect of the own occupation test in relation to his immediate past period of incapacity for work, which period, had that assessment or determination not been made, would have consisted of a period of incapacity for work of more than 196 days.

(2) A welfare to work beneficiary shall be treated as incapable of work on any day in a period, consisting of a cumulative number of days of incapacity for work not exceeding 91 days in total, beginning within the linking term and ending on a day not later than 13 weeks from the end of that linking term, where he—

(a) claims benefit for any day falling within that linking term;

(b) submits evidence in accordance with regulation 2 of the Medical Evidence Regulations(**13**); and

(c) in his immediate past period of incapacity for work—

(i) had been assessed and satisfied the all work test in accordance with Part III, or

(ii) had been treated under regulation 10(**14**) as incapable of work.

(3) A person is not a welfare to work beneficiary under paragraph (1) if—

(a) his immediate past period of incapacity for work was ended by a determination (other than a determination in the circumstances applicable to a person under paragraph (1)) that he was, or was treated as, capable of work; or

(b) his immediate past period of incapacity for work ended within a period of less than 28 weeks from the end of his last linking term.

(4) For the purposes of this regulation—

"benefit" means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay), or under the Jobseekers (Northern Ireland) Order 1995, for which entitlement is dependent on incapacity for work;

"linking term" means a period of 52 weeks (whether or not broken by days of incapacity for work) fixed on the first day immediately following the last day of incapacity in a period of incapacity for work;

"immediate past period of incapacity for work" means a period of incapacity for work under section 30C(1);

"remunerative work" means—

(a) work (other than exempt work under regulation 17) for which payment is made or which is done in expectation of payment; or

(b) attendance on a training course in respect of which the person receives a training allowance in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**15**).".

(**13**) Regulation 2 was amended by regulation 2(1) of S.R. 1982 No. 153, regulation 2(3) of S.R. 1987 No. 117, regulation 2(2) of S.R. 1992 No. 83, regulation 2(3) of S.R. 1994 No. 468 and regulation 2(2) of S.R. 1995 No. 149

(**14**) Regulation 10 was amended by regulation 4(3) of S.R. 1995 No. 149, regulation 4(3) of S.R. 1996 No. 601 and regulation 3 of S.R. 1997 No. 174

(**15**) 1950 c. 29 (N.I.); section 1(1) was substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(3) In regulation 17(2)(*b*)(**16**) (exempt work) the words "or (*b*)" shall be omitted.

Part III

Other Amendments

Amendment of the Social Security (Widow's Benefit and Retirement Pensions) Regulations

5. After regulation 3 of the Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979(**17**) (provisions applying after election) there shall be inserted the following regulation—

"**Calculating periods of incapacity for work for welfare to work beneficiaries entitled to an addition to long-term incapacity benefit**

3A. Section 47(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**18**) (increase of Category A retirement pension for long-term incapacity) shall have effect, in any case where a person is treated in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 as a welfare to work beneficiary, as if for the reference to 8 weeks there were substituted a reference to 52 weeks.".

Amendment of the Statutory Sick Pay (General) Regulations

6. In regulation 3 of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(**19**) (period of entitlement ending or not arising) after paragraph (2) there shall be inserted the following paragraph—

"(2A) A period of entitlement in respect of an employee who was entitled to incapacity benefit, maternity allowance or severe disablement allowance shall not arise in relation to any day within a period of incapacity for work beginning with the first day on which paragraph 2(*d*) of Schedule 11 to the Contributions and Benefits Act(**20**) ceases to have effect where the employee in question is a person to whom regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 (welfare to work beneficiary) applies.".

Amendment of the Social Security (Severe Disablement Allowance) Regulations

7.—(1) The Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984(**21**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 7(**22**) (days for which persons are to be regarded as incapable of work for the purposes of severe disablement allowance) after paragraph (1A) there shall be inserted the following paragraph—

(**16**) Regulation 17 was amended by regulation 2 of S.R. 1998 No. 54
(**17**) S.R. 1979 No. 243, to which there are amendments not relevant to these regulations
(**18**) Section 47 was amended by paragraph 33 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49) and paragraph 13 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**19**) S.R. 1982 No. 263; relevant amending regulations are S.R. 1986 No. 83, S.R. 1987 No. 248 and S.R. 1994 No. 191
(**20**) Paragraph 2(*d*) was substituted by paragraph 42(2) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**21**) S.R. 1984 No. 317; relevant amending regulations are S.R. 1986 No. 337, S.R. 1994 Nos. 370 and 462 and S.R. 1997 No. 174
(**22**) Regulation 7 was amended by regulation 2(5) of S.R. 1994 No. 462