STATUTORY RULES OF NORTHERN IRELAND

1995 No. 67

SOCIAL SECURITY

The Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995

Made - - - - 6th March 1995

Coming into operation in accordance with regulation 1

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(a) and (c), 123(1)(d)(i) and (3), 128(2B)(b) and (c) and (8) and 131(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Article 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**2**) 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 Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation—

(a) for the purposes of this regulation and regulation 3(1), (3) and (4), on 11th April 1995;

(b) for the purposes of regulations 2, 3(2), 4, 5 and 6, on 13th April 1995.

(2) Regulation 3(3) and (4) shall have effect in relation to any particular claimant—

(a) except where sub-paragraph (b) applies, on 11th April 1995;

(b) where a claimant has an award of disability working allowance which is current on 10th April 1995, on the day following the expiration of that award.

(3) Regulations 3(2) and 6 shall have effect in relation to any particular claimant—

(a) except where sub-paragraph (b) applies, on 13th April 1995;

(b) where a claimant has an award of disability working allowance which is current on 12th April 1995, on the day following the expiration of that award.

(4) Regulations 2, 4 and 5 shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 13th April 1995 which applies in his case.

(5) In these Regulations—

(**1**) 1992 c. 7; section 128(2)(a)(i) is substituted by paragraph 32 of Schedule 1 to, and section 128(2A) and (2B) is inserted by Article 12(3) of, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

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

"the Disability Working Allowance Regulations" means the Disability Working Allowance (General) Regulations (Northern Ireland) 1992(**3**);

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**4**);

"adjudication officer" means an adjudication officer appointed under section 36 of the Social Security Administration (Northern Ireland) Act 1992(**5**);

"benefit week" has the same meaning as in the Income Support Regulations;

"claimant" means a claimant for disability working allowance or, as the case may be, for income support.

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

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 4(2)(c) (temporary absence from Northern Ireland) for head (v)(**7**) there shall be substituted the following head—

"(v) on the day on which the absence began he had satisfied the provisions of paragraph 5 of Schedule 1 (persons incapable of work) for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 3OB(4) of the Contributions and Benefits Act(**8**), or who is entitled to the highest rate of the care component of disability living allowance; or

(bb) 364 days in any other case,

and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.".

(3) In regulation 8 (persons not required to be available for employment)—

(a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

"(a) an adjudication officer has determined for the purposes of section 167B of the Contributions and Benefits Act(**9**) (the own occupation test) that that person is not incapable of work;";

(b) after paragraph (2) there shall be inserted the following paragraph—

"(2A) A person, other than one to whom paragraph (2) or regulation 10(1)(h) applies, to whom none of the provisions of Schedule 1 applies, shall, where—

(a) an adjudication officer has determined for the purposes of section 167C of the Contributions and Benefits Act (the all work test) that that person is not incapable of work;

(**3**) S.R.. 1992 No. 78; to which there are amendments not relevant to these regulations
(**4**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, S.R. 1988 No. 318, S.R. 1988 No. 431, S.R. 1989 No. 395, S.R. 1990 No. 297, S.R. 1990 No. 387, S.R. 1991 No. 46, S.R. 1992 No. 6, S.R. 1994 No. 77 and S.R. 1994 No. 327
(**5**) 1992 c. 8
(**6**) 1954 c. 33 (N.I.)
(**7**) Head (v) was added by S.R. 1988 No. 146
(**8**) Section 30B is inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) with effect from 13th April 1995
(**9**) Sections 167A to 167C are inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(b) that person has made and is pursuing an appeal against that determination, and

(c) that person, were he required to be available for employment, would not be treated as so available under regulation 9(1) (persons treated as available for employment),

not be required to be available for employment pending the determination of his appeal.";

(c) in paragraph (3)(**10**) for "paragraph (2)" there shall be substituted "paragraph (2) or (2A)".

(4) In regulation 9(3) (persons treated as available for employment) in the definition of "qualifying benefit" for "sickness benefit under the principal Act" there shall be substituted "short-term incapacity benefit".

(5) In regulation 11 (registration for employment)—

(a) in paragraph (1) for "paragraph (2)" there shall be substituted "paragraphs (2) and (2A)";

(b) in paragraph (2) for sub-paragraph (a)(**11**) there shall be substituted the following sub-paragraph—

"(a) an adjudication officer has determined for the purposes of section 167B of the Contributions and Benefits Act (the own occupation test) that that claimant is not incapable of work;";

(c) after paragraph (2) there shall be inserted the following paragraph—

"(2A) A claimant, other than one to whom paragraph (2) or regulation 10(1)(h) applies, who would, but for this paragraph, be required to be registered for employment in accordance with paragraph (3), shall not be required so to register for employment if—

(a) an adjudication officer has determined for the purposes of section 167C of the Contributions and Benefits Act (the all work test) that that claimant is not incapable of work, and

(b) that claimant has made and is pursuing an appeal against that determination.".

(6) In regulation 22 (reductions in applicable amounts)—

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

"(1A) The weekly applicable amount of a claimant to whom paragraph (5A) applies shall be reduced in accordance with paragraph (1) but for this purpose paragraph (1) shall be modified so that for "40 per cent." there is substituted "20 per cent."";

(b) after paragraph (5) there shall be inserted the following paragraph—

"(5A) This paragraph applies to a claimant who is not required to be available for employment by virtue of regulation 8(2A) (persons not required to be available for employment) or who is not required to register for employment by virtue of regulation 11(2A) (registration for employment).";

(c) in paragraph (6)(d) for "paragraph (5)" there shall be substituted "paragraph (5) or (5A)".

(7) In regulation 31(2) (date on which income is treated as paid)(**12**) for "sickness or invalidity benefit" there shall be substituted "short-term or long-term incapacity benefit", and "under the principal Act" shall be omitted.

(**10**) Paragraph (3) was inserted by regulation 6 of S.R. 1988 No. 146 and amended by regulation 2(b) of S.R. 1991 No. 46
(**11**) Relevant amending regulations are S.R. 1991 No. 46
(**12**) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1988 No. 318

(8) In regulation 32(4)(a) (calculation of weekly amount of income)(**13**) for "sickness or invalidity benefit" there shall be substituted "short-term or long-term incapacity benefit", and "under the principal Act" shall be omitted.

(9) In regulation 73(3) (amount of income support payable for part-weeks)(**14**) for "sickness or invalidity benefit" there shall be substituted "short-term or long-term incapacity benefit", and "under the principal Act" shall be omitted.

(10) In regulation 75(b), (e) and (t) (modifications in the calculation of income)(**15**) for "sickness or invalidity benefit" there shall be substituted "short-term or long-term incapacity benefit", and "under the principal Act" in each of those provisions shall be omitted.

(11) In Schedule 1 (persons not required to be available for employment)—

(a) for paragraph 5 (persons incapable of work)(**16**) there shall be substituted the following paragraph—

"**5.** A person who—

(a) is incapable of work in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work)(**17**);

(b) is treated as capable of work by virtue of regulations made under section 167E(1)(**18**) of that Act (disqualification etc), or

(c) is entitled to statutory sick pay.";

(b) for paragraph 7 (disabled students)(**19**) there shall be substituted the following paragraph —

"**7.** A person who is a student and—

(a) whose applicable amount includes the disability premium or severe disability premium, or

(b) who has satisfied the provisions of paragraph 5 for a continuous period of not less than 196 days, and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.".

(12) In Schedule 2 (applicable amounts) in paragraph 12 (additional condition for the higher pensioner and disability premiums)(**20**)—

(a) in sub-paragraph (1)—

(i) in heads (a)(i) and (c)(i) for "invalidity pension" in each place where those words occur there shall be substituted "long-term incapacity benefit";

(ii) for heads (b) there shall be substituted the following head—

"(b) the claimant—

(i) is entitled to statutory sick pay or is incapable of work in accordance with the provisions of Part XIIA of the Contributions

(**13**) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1988 No. 318
(**14**) Regulation 73 was added by S.R. 1988 No. 146; relevant amending regulations are S.R. 1988 No. 318
(**15**) Regulation 75 was added by S.R. 1988 No. 146; relevant amending regulations are S.R. 1988 No. 318
(**16**) Paragraph 5 was substituted by S.R. 1994 No. 77
(**17**) Part XIIA is inserted by Article 7 of the Social Security (incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995
(**18**) Section 167E is inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995
(**19**) Paragraph 7 was substituted by S.R. 1990 No. 297
(**20**) Relevant amending regulations are S.R. 1988 No. 146, S.R. 1988 No. 431, S.R. 1989 No. 395, S.R. 1990 No. 387, S.R. 1992 No. 6 and S.R. 1994 No. 327

and Benefits Act and the regulations made thereunder (incapacity for work), and

(ii) has been so entitled or so incapable for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 3OB(4) of the Contributions and Benefits Act, or

(bb) 364 days in any other case,

and for these purposes any 2 or more periods of entitlement or incapacity separated by a break of not more than 56 days shall be treated as one continuous period, or";

(b) sub-paragraph (3) shall be omitted;

(c) after sub-paragraph (5)(**21**) there shall be added the following sub-paragraph—

"(6) For the purposes of sub-paragraph (1)(a)(i) and (c)(i), a reference to a person in receipt of long-term incapacity benefit includes a person in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 3OB(4)(a) of the Contributions and Benefits Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.".

Amendment of the Disability Working Allowance Regulations

3.—(1) The Disability Working Allowance Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) After regulation 7 (income-related benefits) there shall be inserted the following regulations—

"**Definition of "training for work"**

7A. For the purposes of section 128(2A)(c) of the Contributions and Benefits Act (which provides that a period of training for work may count towards the period of qualification for disability working allowance) "training for work" also includes any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

Days to be disregarded

7B.—(1) For the purposes of section 128(2B)(c) of the Contributions and Benefits Act (days to be disregarded in determining a period of training for work) there shall be disregarded any day on which the claimant was—

(a) on holiday;

(b) attending court as a justice of the peace, a party to any proceedings, a witness or a juror;

(c) suffering from some disease or bodily or mental disablement as a result of which he was unable to attend training for work, or his attendance would have put at risk the health of other persons;

(d) unable to participate in training for work because—

(**21**) Sub-paragraph (5) was added by S.R. 1988 No. 431