STATUTORY RULES OF NORTHERN IRELAND

1995 No. 41

SOCIAL SECURITY

The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995

Made - - - - 17th February 1995

Coming into operation 13th April 1995

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 167A, 167B, 167C, 167D and 167E of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and section 59A of the Social Security Administration (Northern Ireland) Act 1992(**2**) and of all other powers enabling it in that behalf, by this statutory rule which contains only regulations made consequential upon Articles 7 and 8 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**3**) and which is made before the end of a period of 6 months from the commencement of those provisions, hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 and shall come into operation on 13th April 1995.

Interpretation

2.—(1) In these regulations—

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

(**1**) 1992 c. 7; sections 167A to 167C are inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)); sections 167D and 167E are inserted by Article 8(1) of that Order

(**2**) 1992 c. 8; section 59A is inserted by Article 8(2) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

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

"the Medical Evidence Regulations" means the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(**4**);

"activity" means an activity specified in column (1) of Parts I and II of the Schedule;

"adjudication officer" means an officer appointed in accordance with section 36(1) of the Administration Act;

"the all work test" means the test defined in Part III;

"benefit" does not include statutory sick pay or industrial injuries benefit;

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple the other member of that couple;

"confinement" has the meaning given to by section 167(1) of the Contributions and Benefits Act(**5**);

"descriptor" means, in relation to an activity, the descriptor in column (2) of Parts I and II of the Schedule which describes a person's ability to perform that activity;

"disability appeal tribunal" means a tribunal constituted under section 41 of the Administration Act;

"the Disability Living Allowance Advisory Board" means the board referred to in section 152(1) of the Administration Act;

"doctor" means a registered medical practitioner not being the claimant;

"the own occupation test" means the test defined in section 167B;

"social security appeal tribunal" means a tribunal constituted under section 39 of the Administration Act;

"spell of incapacity" has the meaning given to it by section 167B(3);

"voluntary organisation" means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

"volunteer" means a person who is engaged in voluntary work with a charity or voluntary organisation, or who is engaged in voluntary work otherwise than for a close relative, where the only payment received by him or due to be paid to him by virtue of being so engaged is a payment in respect of any expenses reasonably incurred by him in connection with that work;

"week" means any period of 7 days.

(2) In these regulations, any reference to a numbered section is to the section of the Contributions and Benefits Act bearing that number.

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

Application

3. These regulations do not apply for the purposes of Part V (benefit for industrial injuries) or Part XI (statutory sick pay) of the Contributions and Benefits Act.

(**4**) S.R. 1976 No. 175; amended by S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1992 No. 83 and S.R. 1994 No. 468
(**5**) Section 167(1) is amended by Article 4(b) of the Still-Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10))
(**6**) 1954 c. 33 (N.I.)

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER I:

OWN OCCUPATION TEST

Definition of "remunerative work"

4.—(1) For the purposes of section 167B (the own occupation test) "remunerative work" in relation to the period of 21 weeks referred to in subsection (1) of that section means work—

(a) in one occupation in which a person was engaged for 16 or more hours per week for more than 8 weeks; and

(b) for which payment was made or which was done in expectation of payment.

(2) For the purposes of this regulation and regulation 5—

(a) one occupation comprises either—

(i) all work of the same kind, whether or not it is for the same employer and whether a person is employed or self-employed, or

(ii) all work for the same employer; and

(b) a person who was normally engaged in one occupation for 16 or more hours per week shall be treated as if he had been engaged in that occupation in relation to any week in which he was on paid or unpaid leave from that occupation.

Person with more than one occupation

5. Where a person was engaged in more than one occupation which qualified as remunerative work in the period of 21 weeks referred to in regulation 4(1), his occupation for the purposes of the own occupation test is the last such occupation in which he was engaged during that period; but if, during his last week of remunerative work. in that period, he was engaged in more than one such occupation he must satisfy the own occupation test in respect of each of those occupations.

CHAPTER II:

INFORMATION AND EVIDENCE

Information required for determining capacity for work

6.—(1) Subject to paragraph (2), the information or evidence required for the purpose of determining whether a person is capable or incapable of work is—

(a) where the own occupation test or the all work test applies, evidence of his incapacity for work in accordance with the Medical Evidence Regulations (which prescribe the form of doctor's statement or other evidence required in each case);

(b) where the all work test applies, such information as the Department may request in the form of a questionnaire relating to a person's ability to perform the activities referred to in the Schedule;

(c) such additional information relating to the relevant test as the Department may request.

(2) Where the Department is satisfied that it has sufficient information for a determination as to whether a person is capable or incapable of work without the information specified in paragraph (1)(b), that information shall not be required for the purpose of that determination.

(3) Where it has been determined that a person is to be treated as incapable of work under regulations 10 to 14, the information referred to in paragraph (1) shall not be required.

Failure to provide information

7.—(1) Where a person fails without good cause to comply with a request of the Department to provide the information referred to in regulation 6(1)(b) he shall, subject to paragraph (2), be treated as capable of work.

(2) A person shall not be treated as capable of work under paragraph (1) unless—

(a) at least 6 weeks have elapsed since the Department sent that person the first request for that information; and

(b) the Department has sent that person a further request at least 4 weeks after the first, and at least 2 weeks have elapsed since that further request was sent.

Person may be called for a medical examination

8.—(1) Where a question arises as to whether a person is capable of work, he may be called by or on behalf of a doctor approved by the Department to attend for a medical examination.

(2) Subject to paragraph (3), where a person fails without good cause to attend for or submit himself to such an examination, he shall be treated as capable of work.

(3) A person shall not be treated as capable of work under paragraph (2)unless written notice of the time and place for the examination was sent to him at least 7 days beforehand, or unless he agreed to accept a shorter period of notice.

Matters to be taken into account in determining good cause

9. The matters which are to be taken into account in determining whether a person has good cause under regulation 7 or 8 shall include—

(a) whether he was outside Northern Ireland at the relevant time;(b) his state of health at the relevant time; and

(c) the nature of any disability from which he suffers.

CHAPTER III:

PERSONS TREATED AS INCAPABLE OF WORK

Certain persons with a severe condition to be treated as incapable of work

10.—(1) A person shall be treated as incapable of work on any day on which any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances referred to in paragraph (1) are—

(a) that he is in receipt of the highest rate of the care component of disability living allowance;

(b) that he is suffering from a progressive disease and his death inconsequence of that disease can reasonably be expected within 6 months;

(c) that he has been certified as blind and in consequence is registered as blind in a register maintained by, or on behalf of, a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(**7**);

(d) that he is suffering from any of the following conditions—

(**7**) S.I. 1972/1265 (N.I. 14)

(i) tetraplegia;

(ii) persistent vegetative state;

(iii) dementia;

(iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;

(e) that a doctor approved by the Department has certified that he is suffering from any of the following conditions—

(i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);

(ii) a severe and progressive neurological and muscle wasting disease;

(iii) an active and progressive form of inflammatory polyarthritis;

(iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;

(v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;

(vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;

(vii) a severe and progressive immune deficiency state characterised by the occurrence of opportunistic infections or tumour formation;

(viii) a severe mental illness.

Person with an infectious or contagious disease

11. A person shall be treated as incapable of work on any day in respect of which he is excluded from work on the certificate of the Director of Public Health of a Health and Social Services Board or such other officer of that Board as the Director of Public Health may authorise and is under medical observation by reason of his being a carrier, or having been in contact with a case, of infectious or contagious disease.

Hospital in-patients

12. A person shall be treated as incapable of work on any day on which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Person receiving certain regular treatment

13.—(1) The following provisions apply to a person receiving

(a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;

(b) treatment by way of plasmapheresis, by way of parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs or by way of radiotherapy; or

(c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.7

(2) A person referred to in paragraph (1) shall be treated as incapable of work on any day on which he is engaged in that treatment.