STATUTORY RULES OF NORTHERN IRELAND

1995 No. 35

SOCIAL SECURITY

The Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995

Made - - - - 14th February 1995

Coming into operation 13th April 1995

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 6, 9 and 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**1**) and of all other powers enabling it in that behalf, by this statutory rule, which is made before the end of the period of 6 months beginning with the coming into operation of the statutory provisions under which it is made, hereby makes the following regulations:

PART I

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These regulations maybe cited as the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 and shall come into operation on 13th April 1995.

(2) In these regulations—

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992(**2**);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**3**);

"the Order" means the Social Security Incapacity for Work) (Northern Ireland) Order 1994;

"the appointed day" means 13th April 1995;

(**1**) S.I.1994/1898 (N.I. 12)
(**2**) 1992 c. 8
(**3**) 1992 c. 7

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**4**);

"the Increases for Dependants Regulations" means the Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994(**5**);

"pensionable age" means—

(a) the age of 65, in the case of a man; and

(b) the age of 60, in the case of a woman;

"the Unemployment, Sickness and Invalidity Benefit Regulations" means the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984(**6**).

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

PART II

PROVISIONS COMMON TO THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT AND INVALIDITY BENEFIT

Days to be treated as days of incapacity for work

2.—(1) For the purposes of a transitional award of incapacity benefit under regulations 11 and 17 and for the purposes of enabling a claim for incapacity benefit to be made on or after the appointed day on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day—

(a) days before the appointed day which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit and days specified in paragraph (2) shall be treated as having been days of incapacity for work; and

(b) days of entitlement to sickness benefit or invalidity benefit and days specified in paragraph (3) shall be treated as having been days of entitlement to incapacity benefit.

(2) The specified days referred to in paragraph (1)(a) are—

(a) any Sunday before the appointed day which—

(i) immediately follows a day of incapacity for work;

(ii) immediately precedes a day of incapacity for work;

(iii) does not fall within a period of disqualification by virtue of section 32(**7**) and the provisions in regulation 17 of the Unemployment, Sickness and Invalidity Benefit Regulations(**8**) (disqualification for sickness or invalidity benefit) in operation immediately before the appointed day, and

(iv) falls within a period of interruption of employment running at the appointed day; and

(b) any Sunday which immediately follows a day of incapacity for work in a period of interruption of employment which comes to an end on a Saturday.

(3) The specified days referred to in paragraph (1)(b) are—

(**4**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453, S.R. 1993 Nos. 217 and 375 and S.R. 1994 Nos. 345 and 456

(**5**) S.R. 1994 No. 485

(**6**) S.R. 1984 No. 245; relevant amending regulations are S.R. 1986 No. 82, S.R. 1989 No. 194, S.R. 1992 No. 146 and S.R. 1994 No. 152

(**7**) Section 32 is repealed by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(**8**) Regulation 17 is amended by S.R. 1992 No. 146

(a) any Sunday which falls within the description specified in paragraph (2)(a) and (b);

(b) days which are deemed to be days of entitlement to sickness benefit under regulation 7A of the Unemployment, Sickness and Invalidity Benefit Regulations(**9**) (days deemed to be days of entitlement to sickness benefit);

(c) the seventh day in any week in which an employer was liable to pay a person statutory sick pay at the weekly rate specified in section 153(1)(**10**) (rate of payment); and

(d) any additional days which would have been taken into account for sickness benefit and invalidity benefit purposes had the days referred to in the provisions in regulation 7A(4)(b) of the Unemployment, Sickness and Invalidity Benefit Regulations in operation immediately before the appointed day been days in the week beginning with a Sunday which would be comprised in a fraction of a seven-day week.

Linking periods of interruption of employment and periods of incapacity for work

3. Where the last day of incapacity for work in a period of interruption of employment and the first day of incapacity for work in a period of incapacity for work are not separated by a period of more than 56 days, both these periods shall be treated as one period of incapacity for work.

Calculation of days in a period of incapacity for work

4. The days referred to in regulation 2 shall be taken into account for the purposes of sections 30A(4) (length of entitlement to short-term incapacity benefit), 30B(2) (period after which short-term incapacity benefit payable at higher rate) and 30B(4) (period after which incapacity benefit is payable at long-term rate)(**11**).

Claims for sickness benefit or invalidity benefit made on or after the appointed day

5. Where a claim for sickness benefit or invalidity benefit is made on or after the appointed day in respect of a period of incapacity before the appointed day, the provisions in regulation 19 of, and paragraph 2 of Schedule 4 to, the Claims and Payments Regulations(**12**) (time for claiming benefit) in operation on the appointed day shall be read as if the reference to incapacity benefit were a reference to sickness benefit or invalidity benefit.

Interchange of sickness benefit and invalidity benefit with claims for other benefits

6. Where a claim for sickness benefit, invalidity benefit, severe disablement allowance or maternity allowance is made in respect of a period before the appointed day, the provisions in regulation 9 of, and Part I of Schedule 1 to, the Claims and Payments Regulations(**13**) shall be read as if for the Table set out in Part I of Schedule 1 there were substituted the Table set out in the Schedule to these regulations.

Persons deemed to be incapable of work

7.—(1) A person who immediately before the appointed day is deemed to be incapable of work by virtue of regulation 3(3)(a)(ii) of the Unemployment, Sickness and Invalidity Benefit

(**9**) Regulation 7A is inserted by S.R. 1986 No. 82 and amended by S.R. 1989 No. 194
(**10**) Section 153(1) is amended by Article 10(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**11**) Sections 30A and 30B are inserted by Articles 3(1) and 4(1) respectively of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**12**) Regulation 19 is amended by S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453 and S.R. 1993 No. 375 and paragraph 2 of Schedule 4 is amended by S.R. 1994 No. 456
(**13**) Regulation 7A is inserted by S.R. 1986 No. 82 and amended by S.R. 1989 No. 194

Regulations(**14**) (persons deemed to be incapable of work) shall continue to be so deemed on or after the appointed day notwithstanding that the work referred to in that regulation is undertaken for 16 hours or more in the week in which it is performed.

(2) Paragraph (1) shall cease to apply—

(a) when the period of incapacity for work comes to an end on or after the appointed day; or

(b) when no work is undertaken for a period of not less than 57 continuous days in a period of incapacity for work.

Direct credit transfer

8. Where a person had an award of sickness benefit or invalidity benefit which was payable by way of automated credit transfer in accordance with regulation 21 of the Claims and Payments Regulations(**15**) (direct credit transfer), and that award has effect as an award of incapacity benefit under regulation 11 or 17, the award of incapacity benefit shall continue to be paid by way of automated credit transfer into the same bank or other account as the award of sickness benefit or invalidity benefit; and for this purpose, any application made and any consent given in relation to the award of sickness benefit or invalidity benefit shall be treated as made or given in relation to the transitional award of incapacity benefit.

Disqualification

9. Where immediately before the appointed day a person is disqualified by virtue of regulations made under section 32 or 59 (disqualifications for sickness benefit or invalidity benefit)(**16**), the period of disqualification in respect of sickness benefit or invalidity benefit shall continue to have effect. and that person shall likewise be disqualified for receiving incapacity benefit for the period of disqualification which remains outstanding at the appointed day.

Suspension of payment of transitional awards

10. Where the Department has made a direction to suspend payment of an award of sickness benefit or invalidity benefit in whole or in part, by virtue of regulations made under section 5(1)(o) of the Administration Act, that direction shall have effect as if it were made in respect of a transitional award of incapacity benefit and the payment of the transitional award of Incapacity Benefit shall likewise be suspended as if it were an award of sickness benefit or invalidity benefit.

PART III

PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT

Transitional awards of short-term incapacity benefit

11.—(1) Where a person is entitled to sickness benefit immediately before the appointed day, that award of sickness benefit shall have effect on or after the appointed day as if it were an award of short-term incapacity benefit; and such an award shall be referred to in these regulations as a transitional award of short-term incapacity benefit.

(**14**) Section 153(1) is amended by Article 10(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(**15**) Sections 30A and 30B are inserted by Articles 3(1) and 4(1) respectively of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(**16**) Regulation 19 is amended by S.R. 1988 Nos. 141 and 369, S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 Nos. 7, 83 and 453 and S.R. 1993 No. 375 and paragraph 2 of Schedule 4 is amended by S.R. 1994 No. 456

(2) A person shall cease to be entitled to a transitional award of short-term incapacity benefit under paragraph (1)—

(a) when the period of incapacity for work comes to an end;

(b) after 364 days of entitlement to short-term incapacity benefit in a period of incapacity for work; or

(c) if he was entitled to sickness benefit under section 102(**17**) (sickness benefit in respect of industrial injury) immediately before the appointed day, when the incapacity for work is no longer as a result of a personal injury of the kind mentioned in section 94(1) (right to industrial injuries benefit),

whichever first occurs.

(3) Subject to regulations 29 to 32, a person's entitlements a transitional award of short-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIIA of the Contributions and Benefits Act(**18**) (incapacity for work).

(4) Where a person ceases by virtue of paragraph (2)(b) to be entitled to a transitional award of short-term incapacity benefit he is, subject to him being incapable of work as determined in accordance with Part XIIA of the Contributions and Benefits Act, entitled to long-term incapacity benefit in the same period of incapacity for work on which he is under pensionable age.

Special provisions for persons entitled to short-term incapacity benefit on termination of employment after a period of entitlement to disability working allowance

12. Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(5)(**19**) (days and periods of incapacity for Work) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award (incapacity benefit shall be payable at the latter rate until—

(a) in the case where transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied; or

(b) in any other case, the rate of short-term incapacity benefit under section 30B (rate) together with any increase under section 86A(**20**) (increase for adult dependents) equals or exceeds that rate.

Special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work

13.—(1) Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(6) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

(a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied; or

(b) in any other case, the rate of short-term incapacity benefit under section 30B together with any increase under section 86A equals or exceeds that rate.

(2) Where a person—

(**17**) Section 102 is repealed by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**18**) Part XIIA is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**19**) Section 30C is inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**20**) Section 86A is inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994