1989 No. 364

SOCIAL SECURITY

The Social Security (Unemployment, Sickness and Invalidity Benefit) (Amendment No. 2) Regulations (Northern Ireland) 1989

Made . . . . . *8th September 1989*

Coming into operation . . *9th October 1989*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 17(1)(*a*)(i), (2)(*a*) and (2)(*aa*), 18(2B) and (4), 20(3) and (4) and 20A(2) and (3) of, and Schedule 17 to, the Social Security (Northern Ireland) Act 1975(**a**) and Article 5(2) of the Social Security (No. 2) (Northern Ireland) Order 1980(**b**) 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 Social Security (Unemployment, Sickness and Invalidity Benefit) (Amendment No. 2) Regulations (Northern Ireland) 1989 and shall come into operation on 9th October 1989.

(2) In these regulations "the principal regulations" means the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984(**c**).

(3) The Interpretation Act 1978(**d**) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

Amendment of regulation 1 of the principal regulations

2. In regulation 1(2) of the principal regulations (interpretation) in the appropriate places in alphabetical order there shall be inserted the following definitions—

" "employment or training programme" means a course or programme of rehabilitation or training which is provided or arranged by the Department of Economic Development under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland)

(**a**) 1975 c. 15; section 17(1)(*a*) was amended by Article 12(2) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and section 17(2)(*aa*) was inserted by Article 12(3) of that Order; section 18(2B) was substituted by Article 13 of that Order and section 18(4) was substituted by Article 44(1) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)); section 20(4) was substituted by Article 14(3) of the Social Security (Northern Ireland) Order 1989; section 20A was inserted by Article 14(4) of that Order; Schedule 17 was amended by Article 14(5) of that Order

(**b**) S.I. 1980/1087 (N.I. 13); Article 5(2) was amended by Article 11(1) of the Social Security (Northern Ireland) Order 1989

(**c**) S.R. 1984 No. 245; relevant amending regulations are S.R. 1986 No. 82, S.R. 1988 Nos. 169, 355 and 434 and S.R. 1989 No. 194

(**d**) 1978 c. 30

1945(**a**) or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**b**) for the purpose of assisting persons to select, train for, obtain and retain employed earner's employment;

"Outward Bound course" means any course or programme for personal development which is made available to persons who are not in employment by the charitable trust known as the Outward Bound Trust Limited;

"training allowance" means a training allowance paid under the Employment and Training Act (Northern Ireland) 1950;".

Insertion of regulation 6A in the principal regulations

3. After regulation 6 of the principal regulations (provisions relating to suspension of employment in employed earner's employment) there shall be inserted the following regulation—

"*Requalification period*

6A.—(1) Where paragraph (2) applies to a person during one or more of the 26 weeks referred to in subsection (2) of section 18(**c**) (requalification for unemployment benefit) which applies in his case, for the reference to 26 weeks in that subsection there shall be substituted a reference to the period prescribed under paragraph (3).

(2) This paragraph applies to a person in respect of any week if he does not work in employed earner's employment for 16 hours or more and on at least one day in that week—

(*a*) he was a person entitled to receive sickness benefit, invalidity pension, maternity allowance, invalid care allowance or severe disablement allowance;

(*b*) he was incapable of work for the purposes of section 14(1)(*b*) (sickness benefit) or treated as incapable of work by virtue of section 22(4)(**d**) (state maternity allowance);

(*c*) he was a person entitled to receive statutory sick pay within the meaning of Article 3(1) of the Social Security (Northern Ireland) Order 1982(**e**) or statutory maternity pay within the meaning of Article 47(1) of the Social Security (Northern Ireland) Order 1986(**f**); or

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(**a**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)). *See also* Ministries Act (Northern Ireland) 1946 (c. 11 (N.I.)), section 2 for change in style of Ministry of Labour to Ministry of Labour and National Insurance; S.R. & O. (N.I.) 1964 No. 205, Article 3 for change in style of Ministry of Labour and National Insurance to Ministry of Health and Social Services; S.R. & O. (N.I.) 1973 No. 504, Article 6 for transfer of functions from Ministry of Health and Social Services to Department of Manpower Services and S.I. 1982/846 (N.I. 11), Article 3 for renaming the Department of Manpower Services the Department of Economic Development

(**b**) 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))

(**c**) Section 18(2) was substituted by Article 13 of the Social Security (Northern Ireland) Order 1989

(**d**) Section 22 was substituted by paragraph 13 of Schedule 4 to the Social Security (Northern Ireland) Order 1986 and subsection (4) was amended by paragraph 2(*a*) of Schedule 4 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2))

(**e**) S.I. 1982/1084 (N.I. 16)

(**f**) S.I. 1986/1888 (N.I. 18)

(*d*) he was a person undergoing any employment or training programme for which a training allowance is payable.

(3) For the purposes of paragraph (1), the period shall be either—

(*a*) the period immediately preceding the day mentioned in section 18(2)(*a*) or (*b*) (as the case may be)—

(i) which includes the last 26 weeks (whether consecutive or not) in respect of which paragraph (2) did not apply to the person, and

(ii) which begins on the first day of those 26 weeks; or

(*b*) 78 weeks,

whichever is the shorter.''.

Amendment of regulation 7 of the principal regulations

4. In regulation 7 of the principal regulations (days not to be treated as days of unemployment or incapacity for work)—

(*a*) in paragraph (1)—

(i) sub-paragraph (*a*) shall be omitted,

(ii) for sub-paragraph (*d*) there shall be substituted the following sub-paragraph—

''(*d*) where in any case the employment of a person is terminated and he receives compensation, a day shall not be treated as a day of unemployment if it is a day—

(i) which falls within the ineligible period as defined in paragraph (5), and

(ii) which falls within the period of 52 weeks beginning with the day following the termination of the employment;'';

(*b*) after paragraph (4) there shall be added the following paragraphs—

''(5) For the purposes of paragraph (1)(*d*), ''the ineligible period'' is the period which begins on the day following the termination of the employment and ends—

(*a*) in a case where the person who paid the compensation represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain—

(i) on the due date, unless sub-paragraph (*b*) of this paragraph also applies, or

(ii) if that sub-paragraph does apply, on the date determined under it;

(*b*) in a case where the person who paid the compensation represents that it, or part of it, was paid in lieu of consultation under Article 49 of the Industrial Relations (Northern Ireland) Order 1976(**a**) (duty of employer to consult trade union representatives on redundancy), on the later of—

(a) S.I. 1976/1043 (N.I. 16); Article 49 was amended by Article 2(*a*) of S.R. 1979 No. 305

(i) the day on which the consultation period under that Article would have ended, and

(ii) where sub-paragraph (*a*) of this paragraph also applies, the due date or, where that sub-paragraph does not apply, the standard date; or

(*c*) in any other case, the standard date.

(6) In this regulation—

"compensation" means any payment made to or for a person in respect of the termination of the employment other than—

(*a*) any remuneration paid in respect of the period before the termination;

(*b*) any holiday pay;

(*c*) any payment not falling within paragraph (*a*) or (*b*) of this definition which is paid in respect of any emolument of the employment (whether in money or in kind) and which has accrued before the termination of the employment;

(*d*) any redundancy payment within the meaning of section 11(1) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(**a**); and

(*e*) any refund of contributions to which he was entitled under an occupational pension scheme within the meaning of Article 2(2) of the Pensions Order(**b**);

"due date", in relation to the termination of a person's employment, means whichever of the following dates is applicable in his case, that is to say—

(*a*) the date on which any period of notice applicable to the person was due to expire or would have been due to expire if it had not been waived;

(*b*) where he had a contract of employment for a term certain, the date on which it was due to expire,

and for the purpose of paragraph (*a*) of this definition "period of notice" means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, that period of notice which is customary in the employment in question;

"the standard date" means the earlier of—

(*a*) the due date; and

(*b*) the last day of the period determined by—

(i) dividing the amount of the compensation by the maximum weekly amount which, on the day following the day of termination of employment, is specified in paragraph 5(4) of Schedule 3 to the Contracts of

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(**a**) 1965 c. 19 (N.I.); section 11(1) was amended by paragraph 13 of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976

(**b**) *See* paragraph 44 of Schedule 5 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))

Employment and Redundancy Payments Act (Northern Ireland) 1965(**a**), and

(ii) treating the result (less any fraction of a whole number) as a number of weeks;

"week" means any period of 7 days (including a Sunday).".

Insertion of regulation 7B in the principal regulations

5. After regulation 7A of the principal regulations (days deemed to be days of entitlement to sickness benefit) there shall be inserted the following regulation—

"*Restrictions on availability for employment*

7B.—(1) Subject to paragraphs (2) to (5), a day shall not be treated as a day of unemployment in relation to a person if it falls within a week which includes one or more days in respect of which he imposes restrictions on the nature, hours, rate of remuneration, locality or other conditions of employment which he is prepared to accept.

(2) Paragraph (1) shall not apply if the person shows that he has a reasonable prospect of securing employment notwithstanding those restrictions.

(3) For the purposes of paragraph (2), in deciding whether a person has a reasonable prospect of securing employment regard shall be had, in particular, to the length of the period during which the person has been unemployed.

(4) Paragraph (1) shall not apply in relation to a day—

(*a*) where the restrictions would not prevent the person from having reasonable prospects of securing employment but for the existence of adverse industrial conditions, in the locality or localities concerned, which may reasonably be regarded as temporary;

(*b*) where the restrictions are reasonable in view of the person's physical or mental condition; or

(*c*) subject to paragraph (5), where the person who has imposed the restrictions has a usual occupation and those restrictions relate to it and are consistent with conditions which are usual in that occupation.

(5) Paragraph (4)(*c*) applies in relation to a person only for such period as may be determined in his case in accordance with paragraph (6); and any such period—

(*a*) shall begin on the first day for which he makes a claim for unemployment benefit since the last day on which he was in employment, or in vocational training in his usual occupation, or incapable of work; and

(*b*) shall end not more than 13 weeks after it begins.

(**a**) Paragraph 5 of Schedule 3 was substituted by paragraph 39 of Schedule 5 to the Industrial Relations (Northern Ireland) Order 1976 and paragraph 5(4) was amended by the Schedule to S.R. 1989 No. 85