

1994 No. 461

SOCIAL SECURITY**The Social Security (Incapacity Benefit) Regulations
(Northern Ireland) 1994**

Made 25th November 1994

Coming into operation 13th April 1995

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 30B(7), 30C(3), (4)(a) and (6), 30D(3) and 30E(1) and (2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and of all other powers enabling it in that behalf, by this statutory rule which contains only regulations made consequential upon Articles 4(1) and 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(b), hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994 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(c);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(3) Unless the context otherwise requires, any reference in these regulations to—

(a) a numbered section or Schedule is to the section of or, as the case may be, the Schedule to, the Contributions and Benefits Act bearing that number;

(b) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph of that regulation bearing that number.

PART II

ENTITLEMENT TO INCAPACITY BENEFIT: SUPPLEMENTARY PROVISIONS

Definition of “training for work” for the purposes of section 30C(6)

2. For the purposes of section 30C(6) (which provides for days of training for work to be treated as days of incapacity for work) “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.

(a) 1992 c. 7; section 30B was inserted by Article 4(1) of, and sections 30C to 30E were inserted by Article 5(1) of, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(b) S.I. 1994/1898 (N.I. 12)

(c) 1992 c. 8

Days not to be treated as days of incapacity for work

3.—(1) For the purposes of incapacity benefit a day shall not be treated as a day of incapacity for work if it is—

- (a) a day in respect of which a person—
 - (i) has made no claim for incapacity benefit;
 - (ii) has made a claim for incapacity benefit but not within the prescribed time and good cause for the delay is not shown, or
 - (iii) has made a claim for incapacity benefit but not within the prescribed time and, whether or not the person has shown good cause for the delay, he is not entitled to benefit as a result of section 1(2) of the Administration Act (which provides for a 12 month limit on claims for incapacity benefit);
 - (b) a day on which a person is disqualified for receiving incapacity benefit during a period of absence from Northern Ireland or imprisonment or detention in legal custody, if that disqualification is for more than 6 weeks; or
 - (c) subject to paragraph (2), a day on which a person attends a training course in respect of which he is paid a training allowance pursuant to arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(a).
- (2) Paragraph (1)(c) shall not apply—
- (a) for the purposes of any claim for incapacity benefit for a period commencing after a person ceased attending such a training course; or
 - (b) in calculating a period of continuous incapacity for work for the purposes of regulation 2 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978(b).

Night workers

4.—(1) For the purposes of incapacity benefit, where a person works for a continuous period which extends over midnight into the following day, the day on which the lesser part of that period falls shall be treated as a day of incapacity for work if that person was incapable of work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of incapacity for work, the second day shall be treated as a day of incapacity for work; and
- (b) if the days in question fall at the end of a period of incapacity for work, the first day shall be treated as a day of incapacity for work.

(a) 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))

(b) S.R. 1978 No. 114; relevant amending regulations are S.R. 1983 No. 36, S.R. 1984 No. 317, S.R. 1986 No. 303 and S.R. 1994 Nos. 45 and 269

Calculating periods of incapacity for work for persons receiving certain regular treatment

5.—(1) In the cases specified in paragraph (2), section 30C(1)(b) (which defines a period of incapacity for work) shall have effect as if the period of 4 days mentioned there were a period of 2 days, whether consecutive or not, within a period of 7 consecutive days.

(2) The cases referred to in paragraph (1) are those where the days of incapacity for work in question result from—

- (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 immunosuppressive drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

Days of statutory sick pay to be included in days of entitlement to incapacity benefit

6.—(1) For the purposes of section 30D(3) (which provides for days of entitlement to statutory sick pay to be included in calculating the number of days for which a person has been entitled to short-term incapacity benefit) the days which are to be included are any of the days specified in paragraph (2) which—

- (a) fell within a period of entitlement to statutory sick pay as between that person and his employer which ended not later than the 57th day before the first day of the period of incapacity for work to which that calculation relates; and
- (b) fell on or after a day on which the person satisfied the contribution conditions for short-term incapacity benefit.

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

- (a) in any week in which the employer was liable to pay that person statutory sick pay at the weekly rate specified in section 153(1)(a) (rate of payment), each day of that week; and
- (b) in any week in which the employer was liable to pay that person statutory sick pay at a fraction of that weekly rate, each of the days of that week which would comprise the same fraction of a 7 day week,

and any fractions of days produced by that calculation shall be included in the calculation for the following week; and for any fraction of a day not accounted for at the end of that period of entitlement, one additional day shall be added.

Limit of earnings from councillor's allowance

7. For the purposes of section 30E(1) (net amount of councillor's allowance in excess of prescribed amount to be deducted from incapacity benefit) the prescribed amount is £43·00.

a) Section 153(1) is amended by Article 10(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 6th April 1995

Councillor's allowance paid otherwise than weekly

8.—(1) For the purposes of section 30E(2), where a councillor's allowance is paid otherwise than weekly, an amount calculated in accordance with paragraphs (2) and (3) shall be regarded as the weekly amount of the allowance.

(2) In the case of an attendance allowance, the weekly amount shall be the amount paid in respect of attendances undertaken in the week in question.

(3) In the case of a basic allowance or a special responsibility allowance, the weekly amount shall be calculated—

- (a) where that allowance is paid annually, by dividing the amount paid by 52;
- (b) where that allowance is paid quarterly, by dividing the amount paid by 13;
- (c) where that allowance is paid monthly, by multiplying the amount by 12 and dividing by 52; and
- (d) in any other case, by dividing the amount of the allowance by the number of days in the period and multiplying it by 7.

PART III

RATE OF INCAPACITY BENEFIT

Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date

9.—(1) The weekly rate of long-term incapacity benefit under section 30A(a) (incapacity benefit: entitlement) in relation to a period of incapacity for work shall be increased—

- (a) by the higher amount specified in paragraph (2)(a) if on the qualifying date the beneficiary was under the age of 35; and
- (b) by the lower amount specified in paragraph (2)(b) if on the qualifying date the beneficiary had attained the age of 35 but was under the age of 45.

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

- (a) higher amount £12·15; and
- (b) lower amount £ 6·10.

Qualifying date for entitlement to increased rate of incapacity benefit — previous entitlement to statutory sick pay

10. For the purposes of regulation 9 the qualifying date in relation to a person to whom regulation 6 applies shall be the first day in the period of entitlement mentioned in paragraph (1)(a) of that regulation.

(a) Section 30A is inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995

Qualifying date for entitlement to increased rate of incapacity benefit — members of the armed forces

11.—(1) If, for the purposes of regulation 9, the qualifying date in relation to a person would have been earlier than that specified in section 30B(7) (incapacity benefit: rate) but for the fact that on that earlier date he was a serving member of the forces, the qualifying date in relation to him shall nevertheless be that earlier date.

(2) In this regulation “serving member of the forces” has the same meaning as in regulation 1(2) of the Social Security (Contributions) Regulations 1979(a), except that it does not include a person who falls within that definition by reason only of the fact that he was undergoing training or instruction for a continuous period of not more than 72 hours in any of the forces specified in paragraphs 2 to 9 of Part I of Schedule 3 to those regulations.

Qualifying date for entitlement to increased rate of incapacity benefit — widows

12. If, for the purposes of regulation 9, the qualifying date in relation to a person who was entitled to a widow’s allowance would have been earlier than that specified in section 30B(7), if in respect of that earlier date she had claimed short-term incapacity benefit and had satisfied the contribution conditions for that benefit specified in paragraph 2 of Schedule 3(b) (short-term incapacity benefit), the qualifying date in relation to her shall nevertheless be that earlier date.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 25th November 1994.

(L.S.)

L. Frew

Assistant Secretary

(a) S.I. 1979/591; relevant amending instruments are S.I. 1980/1975 and S.I. 1994/1553
(b) Paragraph 2 of Schedule 3 is amended by Articles 3(2) and 5(2) of, and paragraph 38(2) of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations provide for matters concerning entitlement to and the rate of incapacity benefit, which was introduced into Part II (contributory benefits) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the Act") by the amendments to that Act made by Articles 3 to 5 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 ("the Order").

Part I of these regulations contains general provisions affecting the citation, commencement and interpretation of these regulations.

Part II contains various provisions affecting entitlement to incapacity benefit. In particular these relate to the calculation of periods of incapacity (regulations 3 to 5) and periods of entitlement to incapacity benefit (regulation 6). This Part also prescribes the limit of permitted earnings from a councillor's allowance and the method of calculating such earnings (regulations 7 and 8).

Part III contains provision for long-term incapacity benefit to be payable at an increased rate on account of age. Where a person is under the age of 35 on the qualifying date the rate of long-term incapacity benefit is to be increased by £12.15 a week, and where he is over that age but under the age of 45 the rate is to be increased by £6.10 a week (regulation 9).

The qualifying date is normally the first day of the period of incapacity for work in question, but regulations 10, 11 and 12 make special provision for certain persons who have been entitled to receive statutory sick pay from an employer, persons who have been serving members of the forces and widows.

Sections 30B to 30E of the Act are the enabling provisions under which these regulations are made. They are inserted by Articles 4(1) and 5(1) of the Order and are brought into operation, for the purpose only of authorising the making of regulations on 21st November 1994 and for all other purposes on 13th April 1995, by virtue of Article 2(b) of the Social Security (Incapacity for Work) (1994 Order) (Commencement) Order (Northern Ireland) 1994 (S.R. 1994 No. 450 (C. 15)). Since these regulations are made before the end of a period of 6 months from the commencement of the provisions under which they are made, they are accordingly exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from reference to the Social Security Advisory Committee.