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STATUTORY RULES OF NORTHERN IRELAND

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**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;

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(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.

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(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 in consequence 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—

- (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.<sup>7</sup>

(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.

(3) A person who works during any week in which he receives treatment referred to in paragraph (1) shall be treated as capable of work for the purposes of regulation 16 only on the actual day or days on which he works in that week.

(4) Section 167B(3) (which defines a spell of incapacity) shall have effect in relation to a person referred to in paragraph (1) as if the period of 4 days mentioned in that section were a period of 2 days, whether consecutive or not, within a period of 7 consecutive days.

### **Pregnancy**

**14.** A pregnant woman shall be treated as incapable of work—

- (a) on any day on which, because of her pregnancy, there is a serious risk of damage to her health or to the health of her unborn child if—
  - (i) in a case where the own occupation test applies, she does not refrain from work in the occupation which is relevant for the purposes of that test, or
  - (ii) in a case where the all work test applies, she does not refrain from work in any occupation; or
- (b) in the case of a woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
  - (i) beginning with the first day of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier, and
  - (ii) ending on the 14th day after the actual date of her confinement,
 if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

### **Person to be treated as incapable of work throughout a day**

**15.** A person who at the commencement of any day is, or thereafter becomes, incapable of work by reason of some specific disease or bodily or mental disablement shall be treated as incapable of work throughout that day.

## CHAPTER IV:

### TREATING AS CAPABLE OF WORK, DISQUALIFICATION, ETC.

### **Person who works to be treated as capable of work**

**16.—(1)** Subject to paragraphs (3) and (4) and regulation 13(3), a person shall be treated as capable of work on each day of any week commencing on Sunday during which he does work to which this regulation applies (notwithstanding that it has been determined that he is, or is to be treated under regulations 10 to 15 or 26 as, incapable of work or that he meets the conditions set out in regulation 28(2) for treating the all work test as satisfied until assessment) unless that work—

- (a) falls into any of the categories of exempt work set out in regulation 17(1); and
- (b) is done within the weekly limits set out in regulation 17(2).

(2) Work to which this regulation applies is any work which a person does (not being work as a councillor which is disregarded under section 167F), whether or not he undertakes it in expectation of payment, apart from care of a close relative or domestic tasks carried out in his own home.

(3) A person who does work to which this regulation applies in a week which is—

- (a) the week in any spell of incapacity in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work; or
- (b) the last week in any spell of incapacity,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

(4) A person shall not be treated as capable of work under this regulation by reason only of the fact that, during an emergency, he undertakes any activity to protect another person or to prevent serious damage to property or livestock.

### **Exempt work**

**17.**—(1) The categories of exempt work referred to in regulation 16(1)(a) are—

- (a) work undertaken on the advice of a doctor which—
  - (i) helps to improve, or to prevent or delay deterioration in, the disease or bodily or mental disablement which causes that person's incapacity for work;
  - (ii) is part of a treatment programme and is done under medical supervision while that person is an in-patient or is regularly attending as an out-patient of a hospital or similar institution, or
  - (iii) is done while that person is attending an institution which provides sheltered work for people with disabilities;
- (b) work done as a volunteer;
- (c) duties undertaken as a member of a disability appeal tribunal or the Disability Living Allowance Advisory Board.

(2) The weekly limits referred to in regulation 16(1)(b) in relation to exempt work are—

- (a) that earnings from work referred to in paragraph (1)(a) do not exceed £43.00;
- (b) that, subject to paragraph (3), the combined total of the number of hours spent doing work referred to in paragraph (1)(a)(i) or (b) is less than 16;
- (c) that work referred to in paragraph (1)(c) is not undertaken on more than one day.

(3) A person shall not be treated as capable of work because he has exceeded the limit referred to in paragraph (2)(b) in any week, if he has worked or would be expected to work, as the case may be, an average of less than 16 hours per week—

- (a) in a case where a recognisable cycle in respect of that person's work has been established, in the period of that cycle in which the week in question falls; or
- (b) in any other case, in the period which comprises that week and the 4 weeks preceding it.

### **Disqualification for misconduct, etc.**

**18.**—(1) Paragraph (2) applies where a person—

- (a) has become incapable of work through his own misconduct, except that this disqualification shall not apply in a case where the incapacity is due to pregnancy or a sexually transmitted disease;
- (b) fails without good cause to attend for or submit himself to medical or other treatment (excluding vaccination, inoculation or major surgery) which could significantly improve his medical condition or any disability arising therefrom or which would be likely to render him capable of work; or
- (c) fails without good cause to observe any of the following rules of behaviour, namely—
  - (i) to refrain from behaviour calculated to retard his recovery, or
  - (ii) not to be absent from his place of residence without leaving word where he may be found.

- (2) A person referred to in paragraph (1) shall—
- (a) if he is entitled to incapacity benefit or severe disablement allowance, be disqualified for receiving that benefit or allowance; or
  - (b) in the case of any other benefit, allowance or advantage, be treated as capable of work, for such period not exceeding 6 weeks as may be determined under Part 11 of the Administration Act.

CHAPTER V:  
ADJUDICATION

**Effect of a determination as to capacity for work**

**19.** A determination as to whether a person is, or is to be treated as, capable or incapable of work, which is made for the purpose of determining his entitlement to any benefit, allowance or advantage, shall be treated as conclusive for the purposes of his entitlement to any other benefit, allowance or advantage in respect of any day or any period to which that determination relates.

**Adjudication officer to determine capacity for work**

**20.** Where a question as to whether a person is, or is to be treated as, capable or incapable of work arises in respect of a claim for any benefit, allowance or advantage, that question shall be determined by an adjudication officer notwithstanding that any other question falls to be determined by another authority.

**Social security appeal tribunal to sit with a medical assessor**

**21.** Where a matter before a social security appeal tribunal involves a question as to whether a person satisfies the all work test that tribunal shall sit with a medical assessor.

**Appointment of medical assessors**

**22.—(1)** The President shall constitute for the whole of Northern Ireland a panel of doctors to act as medical assessors for such areas as he thinks fit.

(2) The President may appoint to the panel any doctor with at least 5 years post-registration experience who is not—

- (a) a civil servant in any government department; or
- (b) an employee of, or adviser to, an Organisation which represents, or promotes the rights of, people with disabilities.

(3) The President may appoint a person to the panel for such term as he thinks fit and may terminate that appointment at any time.

PART III  
ALL WORK TEST

**Interpretation of Part III and the Schedule**

**23.** In this Part and the Schedule, any reference to a numbered Part is to the Part in the Schedule bearing that number.



### **The all work test**

24. The all work test is a test of the extent of a person's incapacity, by reason of some specific disease or bodily or mental disablement, to perform the activities prescribed in the Schedule.

### **Assessment under the all work test**

25.—(1) A person satisfies the all work test when one or more of the descriptors specified in Part I or Part II apply to him if, by adding the points listed in column (3) of the Schedule against the descriptor, he obtains a total score of at least—

- (a) 15 points in respect of descriptors specified in Part I;
- (b) 10 points in respect of descriptors specified in Part II; or
- (c) 15 points in respect of descriptors specified in Parts I and II.

(2) In determining the extent of a person's incapacity to perform any activity listed in Part I he shall be assessed as if he were wearing any prosthesis with which he is fitted.

### **Calculation of scores**

26.—(1) In determining a person's score for the purposes of regulation 25(1)(c)—

- (a) a score of between 6 and 9 points in respect of those descriptors specified in Part II shall be treated as a score of 9 points when added to the score in respect of descriptors specified in Part I;
- (b) a score of less than 6 points in respect of any descriptors specified in Part II shall be disregarded.

(2) In determining a person's score where descriptors specified for activities 1 and 2 in Part I apply to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of either activity which applies to him.

(3) In determining a person's score in respect of descriptors specified in Part I where more than one descriptor specified for any activity applies to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of each activity which applies to him.

(4) In determining a person's score in respect of descriptors specified in Part II the score in respect of each descriptor which applies to him shall be counted.

### **Exceptional circumstances**

27. A person who does not satisfy the all work test shall be treated as incapable of work if in the opinion of a doctor approved by the Department—

- (a) he suffers from a previously undiagnosed potentially life-threatening condition;
- (b) he suffers from some specific disease or bodily or mental disablement and, by reason of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work;
- (c) he suffers from a severe uncontrolled or uncontrollable disease; or
- (d) he will, within 3 months of the date on which the doctor so approved examines him, have a major surgical operation or other major therapeutic procedure.

### **Conditions for treating the all work test as satisfied until assessment**

28.—(1) Where the all work test applies, the test shall, if the conditions set out in paragraph (2) are met, be treated as satisfied until a person has been assessed or until he falls to be treated as capable of work in accordance with regulation 7 or 8.

- (2) The conditions referred to in paragraph (1) are—
- (a) that the person provides evidence of his incapacity for work in accordance with the Medical Evidence Regulations; and
  - (b) that it has not within the preceding 6 months been determined, in relation to his entitlement to any benefit, allowance or advantage, that the person is capable of work, or is to be treated as capable of work under regulation 7 or 8, unless—
    - (i) he is suffering from some specific disease or bodily or mental disablement which he was not suffering from at the time of that determination;
    - (ii) a disease or bodily or mental disablement which he was suffering from at the time of that determination has significantly worsened, or
    - (iii) in the case of a person who was treated as capable of work under regulation 7, he has since satisfied any requirements of the Department under that regulation.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

17th February 1995.

*L. Frew*  
Assistant Secretary

SCHEDULE

Regulations 6(1)(b), 24

**Disabilities which may make a person incapable of work**

PART I

PHYSICAL DISABILITIES

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
1. Walking on level ground with a walking stick or other aid if such aid is normally used.	(a) (a) Cannot walk at all.	15
	(b) (b) Cannot walk more than a few steps without stopping or severe discomfort.	15
	(c) (c) Cannot walk more than 50 metres without stopping or severe discomfort.	15
	(d) (d) Cannot walk more than 200 metres without stopping or severe discomfort.	7
	(e) (e) Cannot walk more than 400 metres without stopping or severe discomfort.	3
	(f) (f) Cannot walk more than 800 metres without stopping or severe discomfort.	0
	(g) (g) No walking problem.	0
2. Walking up and down stairs.	(a) (a) Cannot walk up and down one stair.	15
	(b) (b) Cannot walk up and down a flight of 12 stairs.	15
	(c) (c) Cannot walk up and down a flight of 12 stairs without holding on and taking a rest.	7

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	(d) (d) Cannot walk up and down a flight of 12 stairs without holding on.	3
	(e) (e) Can only walk up and down a flight of 12 stairs if he goes sideways or one step at a time.	3
	(f) (f) No problem in walking up and down stairs.	0
3. Sitting in an upright chair with a back, but no arms.	(a) (a) Cannot sit comfortably.	15
	(b) (b) Cannot sit comfortably for more than 10 minutes without having to move from the chair.	15
	(c) (c) Cannot sit comfortably for more than 30 minutes without having to move from the chair.	7
	(d) (d) Cannot sit comfortably for more than 1 hour without having to move from the chair.	3
	(e) (e) Cannot sit comfortably for more than 2 hours without having to move from the chair.	0
	(f) (f) No problem with sitting.	0
4. Standing without the support of another person or the use of an aid except a walking stick.	(a) (a) Cannot stand unassisted.	15
	(b) (b) Cannot stand for more than a minute before needing to sit down.	15

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(1) Activity	(2) Descriptor	(3) Points
	(c) (c) Cannot stand for more than IO minutes before needing to sit down.	15
	(d) (d) Cannot stand for more than 30 minutes before needing to sit down.	7
	(e) (e) Cannot stand for more than IO minutes before needing to move around.	7
	(f) (f) Cannot stand for more than 30 minutes before needing to move around.	3
	(g) (g) No problem standing.	0
5. Rising from sitting in an upright chair with a back but no arms without the help of another person.	(a) (a) Cannot rise from sitting to standing.	15
	(b) (b) Cannot rise from sitting to standing without holding on to something.	7
	(c) (c) Sometimes cannot rise from sitting to standing without holding on to something.	3
	(d) (d) No problem with rising from sitting to standing.	0
6. Bending and kneeling.	(a) (a) Cannot bend to touch his knees and straighten up again.	15
	(b) (b) Cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	15

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	(c) (c) Sometimes cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	3
	(d) (d) No problem with bending and kneeling.	0
7. Manual dexterity.	(a) (a) Cannot turn the pages of a book with either hand.	15
	(b) (b) Cannot turn a tap or control knobs on a cooker with either hand.	15
	(c) (c) Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand.	15
	(d) (d) Cannot use a pen or pencil.	15
	(e) (e) Cannot tie a bow in laces or string.	10
	(f) (f) Cannot turn a tap or control knobs on a cooker with one hand.	6
	(g) (g) Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand.	6
	(h) (h) No problem with manual dexterity.	0
8. Lifting and carrying.	(a) (a) Cannot pick up a paperback book with either hand.	15
	(b) (b) Cannot pick up and carry a 0.5 litre carton of milk with either hand.	15

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	(c) (c) Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand.	15
	(d) (d) Cannot pick up and carry a 2.5 kilogramme bag of potatoes with either hand.	8
	(e) (e) Cannot pick up and carry a 0.5 litre carton of milk with one hand.	6
	(f) (f) Cannot pick up and carry a 2.5 kilogramme bag of potatoes with one hand.	0
	(g) (g) No problem with lifting and carrying.	0
9. Reaching.	(a) (a) Cannot raise either arm to put something in the top pocket of a coat or jacket.	15
	(b) (b) Cannot raise either arm to his head to put on a hat.	15
	(c) (c) Cannot put either arm behind his back to put on a coat or jacket.	15
	(d) (d) Cannot raise either arm above his head to reach for something.	15
	(e) (e) Cannot raise one arm to his head to put on a hat.	6
	(f) (f) Cannot raise one arm above his head to reach for something.	0

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
10. Speech.	(g) (g) No problem with reaching.	0
11. Hearing with a hearing aid or other aid if normally worn.	(a) (a) Cannot speak.	15
	(b) (b) Speech cannot be understood by family or friends.	15
	(c) (c) Speech cannot be understood by strangers.	15
	(d) (d) Strangers have great difficulty understanding speech.	10
	(e) (e) Strangers have some difficulty understanding speech.	8
	(f) (f) No problem with speech.	0
	(a) (a) Cannot hear sounds at all.	15
	(b) (b) Cannot hear well enough to follow a television programme with the volume turned up.	15
	(c) (c) Cannot hear well enough to understand someone, talking in a loud voice in a quiet room.	15
	(d) (d) Cannot hear well enough to understand someone talking in a normal voice in a quiet room.	10
	(e) (e) Cannot hear well enough to understand someone talking in a normal voice on a busy street.	8
	(f) (f) No problem with hearing.	0





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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
14. Remaining conscious other than for normal periods of sleep.	<ul style="list-style-type: none"> <li data-bbox="678 414 989 582">(a) (a) Has an involuntary episode of lost or altered consciousness at least once a day.</li> <li data-bbox="678 582 989 750">(b) (b) Has an involuntary episode of lost or altered consciousness at least once a week.</li> <li data-bbox="678 750 989 918">(c) (c) Has an involuntary episode of lost or altered consciousness at least once a month.</li> <li data-bbox="678 918 989 1388">(d) (d) Has had an involuntary episode of lost or altered consciousness at least twice in the 6 months before the day in respect of which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.</li> <li data-bbox="678 1388 989 1859">(e) (e) Has had an involuntary episode of lost or altered consciousness once in the 6 months before the day in respect of which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.</li> <li data-bbox="678 1859 989 2031">(f) (f) Has had an involuntary episode of lost or altered consciousness once in the 3 years before</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="989 414 1345 582">15</li> <li data-bbox="989 582 1345 750">15</li> <li data-bbox="989 750 1345 918">15</li> <li data-bbox="989 918 1345 1388">12</li> <li data-bbox="989 1388 1345 1859">8</li> <li data-bbox="989 1859 1345 2031">0</li> </ul>

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	the day in respect of which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	
	(g) (g) No problem with consciousness.	0

## PART II

### MENTAL DISABILITIES

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
15. Completion of tasks	<p>(a) (a) Cannot answer the telephone and reliably take a message. 2</p> <p>(b) (b) Often sits for 2 hours doing nothing . 2</p> <p>(c) (c) Cannot concentrate to read a magazine article or follow a radio programme. 1</p> <p>(d) (d) Cannot use a telephone book or other directory to find a number. 1</p> <p>(e) (e) Mental condition prevents him from undertaking leisure activities previously enjoyed. 1</p> <p>(f) (f) Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration 1</p> <p>(g) (g) Agitation, confusion or 1</p>	

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	<p>forgetfulness has resulted in mishaps or accidents in the 3 months before the day in respect of which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage</p>	
<p>16. Daily living.</p>	<p>(h) (h) Concentration can only be sustained by prompting. 1</p> <p>(a) (a) Needs encouragement to get up and dress. 2</p> <p>(b) (b) Needs alcohol before midday. 2</p> <p>(c) (c) Is frequently distressed at some time of the day due to fluctuation of mood. 1</p> <p>(d) (d) Does not care about his appearance and living conditions. 1</p> <p>(e) (e) Sleep problems interfere with his daytime activities. 1</p>	
<p>17. Coping with pressure.</p>	<p>(a) (a) Mental stress was a factor in making him stop work. 2</p> <p>(b) (b) Frequently feels scared or panicky for no obvious reason. 2</p> <p>(c) (c) Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful. 1</p>	

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(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	<p>(d) (d) Is unable to cope with changes in daily routine.</p> <p>(e) (e) Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest.</p> <p>(f) (f) Is scared or anxious that work would bring back or worsen his illness.</p>	<p>1</p> <p>1</p> <p>1</p>
<p>18. Interaction with other people.</p>	<p>(a) (a) Cannot look after himself without help from others.</p> <p>(b) (b) Gets upset by ordinary events and it results in disruptive behavioural problems.</p> <p>(c) (c) Mental problems impair ability to communicate with other people.</p> <p>(d) (d) Gets irritated by things that would not have bothered him before he became ill.</p> <p>(e) (e) Prefers to be left alone for 6 hours or more each day.</p> <p>(f) (f) Is too frightened to go out alone.</p>	<p>2</p> <p>2</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations contain provisions affecting determinations as to capacity for work for the purposes of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the Act”).

Part I contains general provisions relating to citation, commencement, interpretation and application. The regulations do not apply for the purposes of industrial injuries benefit or statutory sick pay.

Part 11 contains general provisions relating to incapacity for work, including provisions which are supplementary to Part XIIA of the Act and provisions relating to adjudication:

Regulation 4 defines “remunerative work” for the purposes of the own occupation test (which is set out in section 167B of the Act) and regulation 5 provides for the application of that test in relation to persons with more than one occupation.

Regulations 6 to 9 provide for the information or evidence required for the purposes of determining capacity for work and the consequences of failing to provide such information or evidence. In particular a person may be called for a medical examination and may be treated as capable of work if he fails to attend.

Regulations 10 to 15 provide for the circumstances in which a person is to be treated as incapable of work.

Regulations 16 to 18 provide for the circumstances in which a person is to be treated as capable of work or disqualified for receiving certain benefits. Subject to certain exceptions, persons are to be treated as capable of work for the whole of any week in which they do work which is not in an exempt category and within defined limits. Persons may also be treated as capable of work or disqualified for receiving benefit on the grounds of misconduct or failure to observe certain rules of behaviour.

Regulations 19 to 22 affect adjudication on questions relating to incapacity for work. In particular they provide for a determination in relation to one benefit to be conclusive for other benefits. They also provide for social security appeal tribunals to sit with a medical assessor in certain cases and for the constitution of panels of such assessors.

Part III relates to the all work test, which is defined in these regulations in accordance with section 167C(2) of the Act:

Regulation 23 provides for the interpretation of Part III and the Schedule.

Regulations 24 to 26 set out the all work test and establish how it is to be satisfied.

Regulation 27 states when a doctor approved by the Department of Health and Social Services may determine that a person who does not satisfy the all work test may nonetheless be treated as incapable of work.

Regulation 28 sets out conditions whereby the all work test shall be treated as satisfied until a person has been assessed or, as the case may be, until he is treated as capable of work.

The Schedule sets out the disabilities which may make a person incapable of work. Part I of the Schedule deals with physical disabilities and Part II with mental disabilities.

Sections 167A to 167E of the Act and section 59A of the Social Security Administration (Northern Ireland) Act 1992, the enabling provisions under which these regulations are made, are inserted by Articles 7 and 8 of the Social Security (incapacity for Work) (Northern Ireland) Order 1994. They 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 the Social Security

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(incapacity for Work) (1994 Order) (Commencement) Order (Northern Ireland) 1994 ([S.R. 1994 No. 450 \(C.15\)](#)). Since the 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.