

## 1995 No. 67

## SOCIAL SECURITY

**The Disability Working Allowance and Income Support  
(General) (Amendment) Regulations (Northern Ireland) 1995**

Made . . . . . 6th March 1995

Coming into operation in accordance with regulation 1

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(a) and (c), 123(1)(d)(i) and (3), 128(2B)(b) and (c) and (8) and 131(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Article 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(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 Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation—

(a) for the purposes of this regulation and regulation 3(1), (3) and (4), on 11th April 1995;

(b) for the purposes of regulations 2, 3(2), 4, 5 and 6, on 13th April 1995.

(2) Regulation 3(3) and (4) shall have effect in relation to any particular claimant—

(a) except where sub-paragraph (b) applies, on 11th April 1995;

(b) where a claimant has an award of disability working allowance which is current on 10th April 1995, on the day following the expiration of that award.

(3) Regulations 3(2) and 6 shall have effect in relation to any particular claimant—

(a) except where sub-paragraph (b) applies, on 13th April 1995;

(b) where a claimant has an award of disability working allowance which is current on 12th April 1995, on the day following the expiration of that award.

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(a) 1992 c. 7; section 128(2)(a)(i) is substituted by paragraph 32 of Schedule 1 to, and section 128(2A) and (2B) is inserted by Article 12(3) 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)

(4) Regulations 2, 4 and 5 shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 13th April 1995 which applies in his case.

(5) In these Regulations—

“the Disability Working Allowance Regulations” means the Disability Working Allowance (General) Regulations (Northern Ireland) 1992(a);

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(b);

“adjudication officer” means an adjudication officer appointed under section 36 of the Social Security Administration (Northern Ireland) Act 1992(c);

“benefit week” has the same meaning as in the Income Support Regulations;

“claimant” means a claimant for disability working allowance or, as the case may be, for income support.

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

#### *Amendment of the Income Support Regulations*

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 4(2)(c) (temporary absence from Northern Ireland) for head (v)(e) there shall be substituted the following head—

“(v) on the day on which the absence began he had satisfied the provisions of paragraph 5 of Schedule 1 (persons incapable of work) for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act(f), or who is entitled to the highest rate of the care component of disability living allowance; or

(bb) 364 days in any other case,

and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.”

(3) In regulation 8 (persons not required to be available for employment)—

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- (a) S.R. 1992 No. 78; to which there are amendments not relevant to these regulations  
 (b) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 No. 146, S.R. 1988 No. 318, S.R. 1988 No. 431, S.R. 1989 No. 395, S.R. 1990 No. 297, S.R. 1990 No. 387, S.R. 1991 No. 46, S.R. 1992 No. 6, S.R. 1994 No. 77 and S.R. 1994 No. 327  
 (c) 1992 c. 8  
 (d) 1954 c. 33 (N.I.)  
 (e) Head (v) was added by S.R. 1988 No. 146  
 (f) Section 30B is inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) with effect from 13th April 1995

(a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) an adjudication officer has determined for the purposes of section 167B of the Contributions and Benefits Act(a) (the own occupation test) that that person is not incapable of work;”;

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) A person, other than one to whom paragraph (2) or regulation 10(1)(h) applies, to whom none of the provisions of Schedule 1 applies, shall, where—

(a) an adjudication officer has determined for the purposes of section 167C of the Contributions and Benefits Act (the all work test) that that person is not incapable of work;

(b) that person has made and is pursuing an appeal against that determination, and

(c) that person, were he required to be available for employment, would not be treated as so available under regulation 9(1) (persons treated as available for employment),

not be required to be available for employment pending the determination of his appeal.”;

(c) in paragraph (3)(b) for “paragraph (2)” there shall be substituted “paragraph (2) or (2A)”.

(4) In regulation 9(3) (persons treated as available for employment) in the definition of “qualifying benefit” for “sickness benefit under the principal Act” there shall be substituted “short-term incapacity benefit”.

(5) In regulation 11 (registration for employment)—

(a) in paragraph (1) for “paragraph (2)” there shall be substituted “paragraphs (2) and (2A)”;

(b) in paragraph (2) for sub-paragraph (a)(c) there shall be substituted the following sub-paragraph—

“(a) an adjudication officer has determined for the purposes of section 167B of the Contributions and Benefits Act (the own occupation test) that that claimant is not incapable of work;”;

(c) after paragraph (2) there shall be inserted the following paragraph—

“(2A) A claimant, other than one to whom paragraph (2) or regulation 10(1)(h) applies, who would, but for this paragraph, be required to be registered for employment in accordance with paragraph (3), shall not be required so to register for employment if—

(a) Sections 167A to 167C are inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(b) Paragraph (3) was inserted by regulation 6 of S.R. 1988 No. 146 and amended by regulation 2(b) of S.R. 1991 No. 46

(c) Relevant amending regulations are S.R. 1991 No. 46

- (a) an adjudication officer has determined for the purposes of section 167C of the Contributions and Benefits Act (the all work test) that that claimant is not incapable of work, and
- (b) that claimant has made and is pursuing an appeal against that determination.”.

(6) In regulation 22 (reductions in applicable amounts)—

(a) after paragraph (1) there shall be inserted the following paragraph—

“(1A) The weekly applicable amount of a claimant to whom paragraph (5A) applies shall be reduced in accordance with paragraph (1) but for this purpose paragraph (1) shall be modified so that for “40 per cent.” there is substituted “20 per cent.”;”

(b) after paragraph (5) there shall be inserted the following paragraph—

“(5A) This paragraph applies to a claimant who is not required to be available for employment by virtue of regulation 8(2A) (persons not required to be available for employment) or who is not required to register for employment by virtue of regulation 11(2A) (registration for employment).”;

(c) in paragraph (6)(d) for “paragraph (5)” there shall be substituted “paragraph (5) or (5A)”.

(7) In regulation 31(2) (date on which income is treated as paid)(a) for “sickness or invalidity benefit” there shall be substituted “short-term or long-term incapacity benefit”, and “under the principal Act” shall be omitted.

(8) In regulation 32(4)(a) (calculation of weekly amount of income)(b) for “sickness or invalidity benefit” there shall be substituted “short-term or long-term incapacity benefit”, and “under the principal Act” shall be omitted.

(9) In regulation 73(3) (amount of income support payable for part-weeks)(c) for “sickness or invalidity benefit” there shall be substituted “short-term or long-term incapacity benefit”, and “under the principal Act” shall be omitted.

(10) In regulation 75(b), (e) and (f) (modifications in the calculation of income)(d) for “sickness or invalidity benefit” there shall be substituted “short-term or long-term incapacity benefit”, and “under the principal Act” in each of those provisions shall be omitted.

(11) In Schedule 1 (persons not required to be available for employment)—

(a) for paragraph 5 (persons incapable of work)(e) there shall be substituted the following paragraph—

“5. A person who—

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- (a) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1988 No. 318
  - (b) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1988 No. 318
  - (c) Regulation 73 was added by S.R. 1988 No. 146; relevant amending regulations are S.R. 1988 No. 318
  - (d) Regulation 75 was added by S.R. 1988 No. 146; relevant amending regulations are S.R. 1988 No. 318
  - (e) Paragraph 5 was substituted by S.R. 1994 No. 77

- (a) is incapable of work in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work)(a);
- (b) is treated as capable of work by virtue of regulations made under section 167E(1)(b) of that Act (disqualification etc), or
- (c) is entitled to statutory sick pay.”;
- (b) for paragraph 7 (disabled students)(c) there shall be substituted the following paragraph—
  - “7. A person who is a student and—
    - (a) whose applicable amount includes the disability premium or severe disability premium, or
    - (b) who has satisfied the provisions of paragraph 5 for a continuous period of not less than 196 days, and for this purpose any 2 or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period.”.
- (12) In Schedule 2 (applicable amounts) in paragraph 12 (additional condition for the higher pensioner and disability premiums)(d)—
  - (a) in sub-paragraph (1)—
    - (i) in heads (a)(i) and (c)(i) for “invalidity pension” in each place where those words occur there shall be substituted “long-term incapacity benefit”;
    - (ii) for heads (b) there shall be substituted the following head—
      - “(b) the claimant—
        - (i) is entitled to statutory sick pay or is incapable of work in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work), and
        - (ii) has been so entitled or so incapable for a continuous period of not less than—
          - (aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act, or
          - (bb) 364 days in any other case,
- (b) sub-paragraph (3) shall be omitted;

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(a) Part XIIA is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995

(b) Section 167E is inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 13th April 1995

(c) Paragraph 7 was substituted by S.R. 1990 No. 297

(d) Relevant amending regulations are S.R. 1988 No. 146, S.R. 1988 No. 431, S.R. 1989 No. 395, S.R. 1990 No. 387, S.R. 1992 No. 6 and S.R. 1994 No. 327

(c) after sub-paragraph (5)(a) there shall be added the following sub-paragraph—

“(6) For the purposes of sub-paragraph (1)(a)(i) and (c)(i), a reference to a person in receipt of long-term incapacity benefit includes a person in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Contributions and Benefits Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.”.

*Amendment of the Disability Working Allowance Regulations*

3.—(1) The Disability Working Allowance Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) After regulation 7 (income-related benefits) there shall be inserted the following regulations—

*“Definition of “training for work”*

7A. For the purposes of section 128(2A) of the Contributions and Benefits Act (which provides that a period of training for work may count towards the period of qualification for disability working allowance) “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.

*Days to be disregarded*

7B.—(1) For the purposes of section 128(2B)(c) of the Contributions and Benefits Act (days to be disregarded in determining a period of training for work) there shall be disregarded any day on which the claimant was—

- (a) on holiday;
- (b) attending court as a justice of the peace, a party to any proceedings, a witness or a juror;
- (c) suffering from some disease or bodily or mental disablement as a result of which he was unable to attend training for work, or his attendance would have put at risk the health of other persons;
- (d) unable to participate in training for work because—
  - (i) he was looking after a child because the person who usually looked after that child was unable to do so;
  - (ii) he was looking after a member of his family who was ill;
  - (iii) he was required to deal with some domestic emergency; or
  - (iv) he was arranging or attending the funeral of his partner or a relative; or

(e) authorised by the training provider to be absent from training for work.

(2) For the purposes of paragraph (1)(d)(iv), “relative” means close relative, grandparent, grandchild, uncle, aunt, nephew or niece.”

(3) In regulation 51 (determination of appropriate maximum disability working allowance)—

(a) in paragraph (1) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) in respect of any child or young person to whom paragraph (1A) applies, the allowance specified in paragraph 5 of column (2) of Schedule 5.”;

(b) after paragraph (1) there shall be inserted the following paragraphs—

“(1A) This paragraph applies to a child or young person for whom the claimant or his partner is responsible and who is a member of the claimant’s household, and—

(a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient;

(b) who 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(a); or

(c) who ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim.

(1B) For the purposes of paragraph (1A)(a), “patient” has the same meaning it has in regulation 10(3)(a) (membership of the same household).”.

(4) In Schedule 5 (determination of appropriate maximum disability working allowance)—

(a) in column (1) after paragraph 4 there shall be added the following paragraph—

“5. Child or young person to whom regulation 51(1A) applies (disabled child or young person).”;

(b) in column (2) after paragraph 4 there shall be added the following paragraph—

“5. £19.80.”.

#### *Transitional provisions with respect to the Income Support Regulations*

4.—(1) Sickness benefit shall be a qualifying benefit for the purposes of regulation 9(2)(a)(i) of the Income Support Regulations, and for this purpose “sickness benefit” means sickness benefit under section 31 of the Contributions and Benefits Act as in operation on 12th April 1995.

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(a) S.I. 1972/1265 (N.I. 14)

(2) Where the disability premium was applicable to a claimant on 12th April 1995 by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support Regulations as in operation on that date, the disability premium shall continue to be applicable to that claimant for so long as paragraph 12(1)(b)(i) of that Schedule applies to him.

(3) Paragraph (2) shall not apply to a claimant to whom paragraph 12(1)(b)(i) of Schedule 2 to the Income Support Regulations has ceased to apply for a period of more than 56 continuous days.

(4) Where on 12th April 1995 paragraph 5 of Schedule 1 to the Income Support Regulations (persons incapable of work) as in operation on that date applied to a claimant, but the disability premium was not applicable to him, that claimant shall be treated for the purposes of paragraph 12(1) of Schedule 2 to the Income Support Regulations as if, throughout the period that that paragraph 5 of Schedule 1 had applied to him, paragraph 12(1)(b)(i) of Schedule 2 to the Income Support Regulations applied to him.

(5) Where an adjudication officer on or after 13th April 1995, determines that a claimant fails to satisfy the incapacity for work test, in accordance with regulations made under section 167C of the Contributions and Benefits Act (the all work test), on its first application to the claimant concerned, and the claimant, immediately prior to that date, was either—

(a) incapable of work and had been so for a continuous period of 28 weeks in circumstances to which paragraph 5 of Schedule 1 to the Income Support Regulations refers (persons incapable of work not required to be available for employment); or

(b) in receipt of invalidity benefit or severe disablement allowance,

then, in a case in which either regulation 8(2A) or 11(2A) of the Income Support Regulations applies (persons not required to be available for employment and registration for employment), notwithstanding regulation 22(1A) and (5A) of the Income Support Regulations (reductions in applicable amounts), the amount of any income support to which the claimant is entitled shall be calculated in accordance with regulation 17 of the Income Support Regulations.

#### *Savings with respect to the Income Support Regulations*

5.—(1) Where a person was not required to be available for employment on 12th April 1995 by virtue of regulation 8(2) of the Income Support Regulations as in operation on that date, that regulation shall continue to apply in that person's case as if regulation 2(3) of these Regulations had not been made.

(2) Where a claimant was not required to register for employment on 12th April 1995 by virtue of regulation 11(2) of the Income Support Regulations as in operation on that date, that regulation shall continue to apply in that claimant's case as if regulation 2(5) of these Regulations had not been made.

(3) Where a claimant appeals against a decision of an adjudication officer that he is not incapable of work, and that decision was made on or before 12th April 1995, regulations 8 and 11 of the Income Support Regulations shall apply in that claimant's case as if these Regulations had not been made.



(4) Where the higher pensioner premium was applicable to a claimant on, or at any time during the 8 weeks immediately preceding, 12th April 1995 by virtue of paragraph 12(1)(c)(i) of Schedule 2 to the Income Support Regulations as in operation on that date, paragraph 12 of that Schedule shall continue to apply in that claimant's case as if regulation 2(12)(a)(i) and (c) of these Regulations had not been made.

*Transitional provisions with respect to the Disability Working Allowance Regulations*

6.—(1) Where invalidity pension was payable to the claimant for one or more of the 56 days immediately preceding the date on which the claim for disability working allowance was made or was treated as made, the payments shall be treated for the purposes of section 128(2)(a)(i) of the Contributions and Benefits Act as payments of long-term incapacity benefit.

(2) Any day on which a claimant was entitled to invalidity pension under section 33, 40 or 41 of the Contributions and Benefits Act as in operation on 12th April 1995 shall be treated for the purposes of section 128(2A)(b) of that Act as a day on which he was entitled to long-term incapacity benefit.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th March 1995.

(L.S.)

W. G. Purdy

Assistant Secretary

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

These Regulations amend the Income Support (General) Regulations (Northern Ireland) 1987 and the Disability Working Allowance (General) Regulations (Northern Ireland) 1992 and are in part consequential on the coming into operation of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (“the Order”), which replaces sickness and invalidity benefits with incapacity benefit, and provides for a new test of incapacity for work.

The Income Support (General) Regulations (Northern Ireland) 1987 are amended to—

- (a) provide that a claimant may be entitled to income support whilst absent from Northern Ireland if he had been incapable of work for 364 days before the absence began, or 196 days in the case of a claimant who is terminally ill or who is entitled to the highest rate of the care component of disability living allowance, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 2(2));
- (b) provide that a claimant who has failed the incapacity for work test and is appealing against that decision is not required to be available for work or to register for employment, but that a claimant in these circumstances who has failed the “all-work” test will have the personal allowance element of his applicable amount reduced by 20 per cent. (regulation 2(3), (5) and (6));
- (c) provide that a person is exempt from the requirement to be available for work where he is incapable of work or where he fails the incapacity test solely on grounds of misconduct or similar matters (regulation 2(11)(a));
- (d) provide that a student may be entitled to income support if his applicable amount includes the disability premium or severe disability premium, or if he has been incapable of work for 196 days, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 2(11)(b));
- (e) extend the qualifying period for the disability premium on grounds of incapacity for work from 28 weeks to 364 days, except for claimants who are terminally ill, and they provide that the qualifying period may be broken by gaps of up to 56 days; they also permit the disability premium to be excluded from the applicable amount in respect of any period during which a claimant fails the incapacity test on grounds of misconduct or similar matters (regulation 2(12)); and
- (f) make additional consequential and transitional amendments, and savings (regulations 2(4) and (7) to (10), 4 and 5).

The Disability Working Allowance (General) Regulations (Northern Ireland) 1992 are amended to—

- (a) further define training for work and to list days which are to be disregarded in establishing whether a person was engaged in a period of training for work (regulation 3(2));
- (b) provide an additional allowance in respect of a disabled child in the maximum disability working allowance (regulation 3(3) and (4)); and
- (c) make transitional arrangements consequential on the abolition of invalidity pension and the introduction of incapacity benefit (regulation 6).

Regulations 3(2) and 6 are made under section 128(2B) of the Social Security Contributions and Benefits Act 1992 and Article 14(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 ("the Order") respectively and regulations 2(2), (4), (7), (8), (9), (10), (11) and (12)(a)(i) and (c), 4(1) to (4) and 5 are made under Article 14(1) of the Order. Article 14(1) of the Order was brought into operation on 21st November 1994 by virtue of the Social Security (Incapacity for Work) (1994 Order) (Commencement) Order (Northern Ireland) 1994 (S.R. 1994 No. 450 (C. 15)). These regulations are made before the end of a period of 6 months from the commencement of the said Article 14(1), and are accordingly exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) ("the Administration Act"), from reference to the Social Security Advisory Committee.

Otherwise these regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Administration Act, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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### 1995 No. 68

This Order has been exempted from printing by the Statutory Rules (Northern Ireland) Order 1979. A summary is given in the List of Statutory Rules of a Local Character under the heading ROADS.