
STATUTORY RULES OF NORTHERN IRELAND

1995 No. 35

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

PART VI

**PROVISIONS FOR THE TRANSITION TO THE
NEW TESTS OF INCAPACITY FOR WORK**

Transitional awards of incapacity benefit

29. A person's entitlement to a transitional award of incapacity benefit shall, except as provided in regulation 31 be subject to him satisfying the tests of incapacity for work under Part XIIA(1) of the Contributions and Benefits Act (incapacity for work).

Transitional provision in respect of other benefits

30. A person's continued enjoyment on or after the appointed day of severe disablement allowance or any other advantage under any provision for the purposes of which Part XIIA of the Contributions and Benefits Act applies shall, except as provided in regulation 31, be subject to satisfying the tests of incapacity for work under that Part of the Contributions and Benefits Act.

Application of the new tests of incapacity for work

31.—(1) Where it has been determined that a person is incapable of work for any purpose of the Contributions and Benefits Act immediately before the appointed day and on or after the appointed day the all work test applies to him, he shall not be required to satisfy or be treated as having satisfied the condition of entitlement that he is incapable of work in accordance with that test until he has been assessed as to incapacity for work in accordance with regulations made under section 167C(2) (the all work test) or until it is determined that he falls within one of the cases mentioned in paragraph (5), so long as he satisfies the condition in paragraph (2).

(2) The condition referred to in paragraph (1) is that, in respect of each day, a person shall be required to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(3) (which prescribe the form of doctor's statement or other evidence in each case).

(3) Subject to paragraph (4), a person who falls within one of the cases mentioned in paragraph (5) shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 167C.

(1) Part XIIA is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(2) Section 167C is inserted by Article 7 of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(3) S.R. 1976 No. 175, as amended by S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1991 No. 488, S.R. 1992 No. 83 and S.R. 1994 No. 468

(4) Where it is determined that a person falls within one of the cases mentioned in sub-paragraphs (a) to (c) of paragraph (5) and sub-paragraphs (d) to (h) of that paragraph do not apply, that person shall continue to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976; and provided that such evidence is furnished he shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 167C.

(5) The cases referred to in paragraph (3) are—

- (a) a person who—
 - (i) was entitled to invalidity benefit on 1st December 1993 and on 12th April 1995;
 - (ii) between the period beginning on 1st December 1993 and ending on 13th April 1995, was not capable of work for that period or for two or more periods not separated by a period of more than 56 continuous days, and
 - (iii) is aged 58 or over on the appointed day;
- (b) a person who—
 - (i) was entitled to income support or housing benefit on 1st December 1993;
 - (ii) was incapable of work for a period of not less than 28 weeks immediately before 1st December 1993;
 - (iii) had an applicable amount which included the disability premium on account of his own incapacity on 12th April 1995;
 - (iv) between the period beginning on 1st December 1993 and ending on 13th April 1995, was incapable of work for that period or for two or more periods not separated by a period of more than 56 continuous days, and
 - (v) is aged 58 or over on the appointed day;
- (c) a person who was in receipt of a payment of an award of severe disablement allowance under section 68(4) immediately before the appointed day;
- (d) a person who was in receipt of a payment of an award of the highest rate of the care component of disability living allowance immediately before the appointed day and continues to be in receipt of such payment;
- (e) a person who is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (f) a person 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(5);
- (g) a person suffering from one 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;
- (h) where a doctor approved by the Department has certified that a person is suffering from any of the following conditions—

(4) Section 68 is amended by [S.R. 1994 No. 370](#) and Article 11 of, and paragraph 18 of Schedule 1 to, and Schedule 2 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(5) [S.I.1972/1265 \(N.I. 14\)](#)

- (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 or 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.

Treatment of days of incapacity arising before the appointed day

32. The days of incapacity for work before the appointed day and the days which are treated as days of incapacity for work in accordance with regulation 2 shall be taken into account for the purposes of calculating the days of incapacity referred to in section 167B(3) and (4)(6) (period after all work test applies).