
STATUTORY INSTRUMENTS

1994 No. 1898 (N.I. 12)

NORTHERN IRELAND

**The Social Security (Incapacity for
Work) (Northern Ireland) Order 1994**

Made - - - - *19th July 1994*
Laid before Parliament *29th July 1994*
Coming into operation on days to be appointed under
Article 1(2)

At the Court at Buckingham Palace, the 19th day of July 1994

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Social Security (Incapacity for Work) Act 1994:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (as modified by section 14 of the Act of 1994) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1.—(1) This Order may be cited as the Social Security (Incapacity for Work) (Northern Ireland) Order 1994.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

“the confirmatory procedure” means the procedure described in section 172(1) of the Contributions and Benefits Act;

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

“the Department” means the Department of Health and Social Services.

Incapacity benefit: entitlement

3.—(1) In Part II of the Contributions and Benefits Act (contributory benefits), after section 30 insert—

“Incapacity benefit

Incapacity benefit: entitlement.

30A.—(1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.

(2) The conditions are that—

- (a) he is under pensionable age on the day in question and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or
- (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
 - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or
 - (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) A person is not entitled to short-term incapacity benefit for the first 3 days of any period of incapacity for work.

(4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.

(5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.”;

(2) In Schedule 3 to the Contributions and Benefits Act (contribution conditions for entitlement to benefit), in the heading before paragraph 2 and in sub-paragraph (1) of that paragraph for “sickness benefit” substitute “short-term incapacity benefit”.

Incapacity benefit: rate

4.—(1) In the Contributions and Benefits Act, after section 30A (inserted by Article 3) insert—

“Incapacity benefit: rate.

30B.—(1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.

(2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

(3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
- (b) any increase (for dependants) under section 80, 83 or 85 below; and
- (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.

(4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—

- (a) is terminally ill; or
- (b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

(5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.

(6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.

(7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.”.

(2) In Part I of Schedule 4 to the Contributions and Benefits Act (rates of benefit, etc.: contributory periodical benefits), for paragraph 2 substitute—

“2. Short-term incapacity benefit.	(a)	lower rate £43.45
	(b)	higher rate £52.50.
2A. Long-term incapacity benefit.		£57.60.”.

(3) In section 80 of the Contributions and Benefits Act (increases for beneficiary’s dependent children), for subsection (2)(b) and (c) substitute—

- “(b) short-term incapacity benefit at the higher rate or where the beneficiary is over pensionable age;

(c) long-term incapacity benefit; and”.

(4) After section 86 of the Contributions and Benefits Act insert—

“Incapacity benefit: increase for adult dependants.

86A.—(1) The weekly rates of short-term and long-term incapacity benefit shall, in such circumstances as may be prescribed, be increased for adult dependants by the appropriate amount specified in relation to benefit of that description in Schedule 4, Part IV, column (3).

(2) Regulations may provide that where the person in respect of whom an increase of benefit is claimed has earnings in excess of such amount as may be prescribed there shall be no increase of benefit under this section.”.

(5) In Part IV of Schedule 4 to the Contributions and Benefits Act (rates of benefit etc.: increases for dependants), after paragraph 1 insert—

“1A. Short-term incapacity benefit—		
(a)	where the beneficiary is under pensionable age	11.00 26.90
(b)	where the beneficiary is over pensionable age	11.00 33.10”and for paragraph 2 substitute—
“2. Long-term incapacity benefit		
	11.00	34.50”

(6) Any order under section 132 of the Administration Act (annual up-rating of benefits) made by the Department before the commencement of this Article shall include provision—

(a) making such increase (if any) in the sum specified in the provision inserted by paragraph (2) as the amount of short-term incapacity benefit at the higher rate as is necessary to make that sum equal to the higher rate or, if there is only one such rate, to the rate of statutory sick pay payable after the order comes into operation; and

(b) making such increases in the other sums specified in the provisions inserted by paragraphs (2) and (5) in Schedule 4 to the Contributions and Benefits Act as would have been required if the provisions in question had been in operation at all material times.

Incapacity benefit: supplementary provisions

5.—(1) After section 30B of the Contributions and Benefits Act (inserted by Article 4) insert—

“Incapacity benefit: days and periods of incapacity for work.

30C.—(1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—

- (a) a day of incapacity for work means a day on which a person is incapable of work;
- (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
- (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.

(2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.

(3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.

(4) Regulations may provide—

- (a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be specified in the regulations; and
- (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.

(5) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him; and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(6) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

(7) For the purposes of this section “week” means any period of 7 days.

Incapacity benefit: construction of references to days of entitlement.

30D.—(1) The following provisions have effect in calculating for the purposes of—

- (a) section 30A(4) above (length of entitlement to short-term incapacity benefit);
- (b) section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);
- (c) section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and
- (d) section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

the number of days for which a person has been entitled to short-term incapacity benefit.

(2) There shall be included—

- (a) the first 3 days of the period of incapacity for work; and
- (b) in the case of a woman, any days for which she was entitled to maternity allowance.

(3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.

(4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.

Incapacity benefit: reduction for councillor's allowance.

30E.—(1) Where the net amount of councillor's allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(2) In this section "councillor's allowance" means such payments for or in connection with the work which a person undertakes as a member of a district council as may be prescribed for the purposes of this section; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments.

(3) In subsection (1) above "net amount", in relation to any councillor's allowance to which a person is entitled, means the aggregate amount of the councillor's allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question."

(2) In Schedule 3 to the Contributions and Benefits Act, at the end of paragraph 2 (contribution conditions for entitlement to short-term incapacity benefit) add—

"(7) Where a person makes a claim for incapacity benefit and does not satisfy the second contribution condition (specified in sub-paragraph (3) above) and, in a later benefit year in which he would satisfy that condition had no such claim been made, he makes a further claim for incapacity benefit, the previous claim shall be disregarded."

Power to provide for the transition to incapacity benefit

6.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of, or in connection with, the transition to incapacity benefit from sickness benefit and invalidity benefit.

Nothing in the following provisions of this Article shall be construed as restricting the generality of that power.

(2) In this Article—

“commencement” means the commencement of Articles 3 to 5 and the consequential repeal of the provisions of the Contributions and Benefits Act relating to sickness benefit and invalidity benefit; and

“prescribed” means prescribed by regulations under this Article.

(3) Regulations under this Article may provide that where a person was entitled to sickness benefit or invalidity benefit immediately before commencement any award of sickness benefit or invalidity benefit shall have effect after commencement, in accordance with the regulations and subject to such modifications as may be prescribed, as an award of incapacity benefit.

In the following provisions of this Article such an award is referred to as a “transitional award” of incapacity benefit.

(4) The reference in paragraph (3) to a person who was entitled to sickness benefit or invalidity benefit includes a person who would have been so entitled but for being disqualified by virtue of regulations under section 32 or 59 of the Contributions and Benefits Act; and regulations under this Article may provide that any such disqualification shall have such corresponding effect as may be prescribed in relation to the transitional award.

(5) Regulations under this Article may provide that a person’s entitlement under a transitional award of incapacity benefit shall, except as may be prescribed, be subject to satisfying the conditions of entitlement to incapacity benefit, and may in particular provide—

- (a) for the determination in accordance with Part XIIA of the Contributions and Benefits Act (inserted by Article 7) of the question whether that person is incapable of work;
- (b) for the termination of his entitlement on his attaining pensionable age.

Excepted cases may be defined, in particular, by reference to the age of the person on commencement and whether he was receiving invalidity benefit on 1st December 1993 (the date of the announcement of the new scheme).

(6) Regulations under this Article may provide—

- (a) that days before commencement which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of incapacity for work for the purposes of incapacity benefit; and
- (b) that days of entitlement to sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of entitlement to incapacity benefit.

Such provision may be made for the purposes of a transitional award of incapacity benefit or of enabling a claim for incapacity benefit to be made after commencement on the basis that a day of incapacity for work after commencement forms part of a period of incapacity for work beginning before commencement; and such cases are referred to in the following provisions of this Article as “transitional cases”.

(7) Regulations under this Article may provide—

- (a) for the rate of short-term incapacity benefit under a transitional award to be increased, in such cases as may be prescribed, as if that benefit were sickness benefit and the provisions of Part IV of the Contributions and Benefits Act (increases for dependants) continued to apply to that benefit; and
- (b) for the payment in transitional cases, in such circumstances as may be prescribed, of long-term incapacity benefit to persons over pensionable age.

(8) Regulations under this Article may provide that in transitional cases the rate of short-term incapacity benefit at the higher rate or of long-term incapacity benefit shall be calculated—

- (a) by reference to the rate of invalidity benefit, and of any relevant related allowance, addition or increase, paid or payable immediately before commencement, with such up-rating (if any) as may be provided for in accordance with the regulations (whether by applying the provisions of section 132 of the Administration Act or otherwise); and
- (b) without any increase or addition which would otherwise be payable with incapacity benefit.

(9) If regulations make provision of the kind mentioned in paragraph (8) they may also make with respect to any additional pension element of incapacity benefit provision corresponding to any of the provisions in force before commencement with respect to the additional pension element of invalidity pension.

(10) Regulations under this Article may provide, in relation to transitional cases where the rate of incapacity benefit falls to be calculated by reference to the rate of dependency allowance paid or payable before commencement, that any old saving provisions shall have effect subject to the regulations or shall cease to have effect in accordance with the regulations.

For the purposes of this paragraph—

“dependency allowance” means an allowance of the kind provided for in Part IV of the Contributions and Benefits Act;

“old saving provisions” means provisions of any description, including administrative provisions, in connection with a previous change affecting entitlement to or the amount of dependency allowances, preserving a person’s position in any respect.

(11) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(12) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations under this Article shall be subject to the confirmatory procedure.

(13) A statutory rule—

- (a) which contains (whether alone or with other provisions) any regulations made under this Article; and
- (b) which is not subject to the confirmatory procedure, shall be subject to negative resolution.

Test of incapacity for work

7. In the Contributions and Benefits Act, after section 167 insert—

“PART XIIA

INCAPACITY FOR WORK

Test of incapacity for work.

167A.—(1) For the purposes of this Act, save as otherwise expressly provided, whether a person is capable or incapable of work shall be determined in accordance with this Part of this Act.

(2) Regulations may make provision as to—

- (a) the information or evidence required for the purpose of determining whether a person is capable or incapable of work; and

(b) the manner in which that information or evidence is to be provided;
and may provide that if a person without good cause fails to provide that information or evidence, or to do so in the manner required, he shall be treated as capable of work.

(3) Regulations may provide that in any case where a question arises as to whether a person is capable of work—

- (a) he may be called to attend for such medical examination as may be required in accordance with regulations; and
- (b) if he fails without good cause to attend for or submit himself to such examination, he shall be treated as capable of work.

(4) Regulations may prescribe for the purposes of this section—

- (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
- (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

The own occupation test.

167B.—(1) Where a person has been engaged in remunerative work for more than 8 weeks in the 21 weeks immediately preceding the day with respect to which it falls to be determined whether he is or was incapable of work, the test applicable is the own occupation test.

(2) The own occupation test is whether he is incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged.

(3) Where for any purpose of this Act it is determined in relation to a person—

- (a) that the test applicable with respect to any day is the own occupation test; and
- (b) that he is on that test incapable of work,

that test remains applicable in his case until the end of the spell of incapacity beginning with that day or, as the case may be, in which that day falls, or until the 197th day of incapacity for work in that spell, whichever is the earlier.

For this purpose a “spell of incapacity” means a series of 4 or more consecutive days of incapacity for work; and any two such spells not separated by a period of more than 8 weeks shall be treated as one spell of incapacity.

(4) For the purposes of subsection (3) above a day of incapacity for work means a day—

- (a) with respect to which it has been determined for any purpose of this Act that the person in question was incapable of work; or
- (b) in respect of which he was entitled to statutory sick pay; or
- (c) in the case of a woman, which falls within the maternity allowance period; or
- (d) which in accordance with regulations is to be treated for those purposes as a day of incapacity for work.

(5) Any provision of this Act apart from subsection (4) above under or by virtue of which a day is or is not to be treated for any purpose as a day of incapacity for work shall be disregarded for the purposes of this section.

(6) Provision may be made by regulations defining for the purposes of this section what is meant by “remunerative work”.

The regulations may, in particular, provide—

- (a) for “remunerative work” to be defined by reference to the number of hours worked per week; and
 - (b) for training of any prescribed description to be treated as if it were remunerative work.
- (7) Provision may be made by regulations as to the application of this section in cases where a person engages in more than one occupation or in different kinds of work.
- (8) Regulations may provide that subsection (3) above shall have effect as if—
- (a) the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
 - (b) for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.

The all work test.

167C.—(1) Where in any case the own occupation test is not applicable, or has ceased to apply, the test applicable is the all work test.

- (2) Provision shall be made by regulations—
- (a) defining the all work test by reference to the extent of a person’s incapacity by reason of some specific disease or bodily or mental disablement to perform such activities as may be prescribed; and
 - (b) as to the manner of assessing whether the all work test is satisfied.
- (3) Regulations may provide that where the all work test applies the test shall, if the prescribed conditions are met, be treated as satisfied until the person has been assessed or he falls to be treated as capable of work in accordance with regulations under section 167A(2) or (3) above or section 167E below.

The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.”.

Test of incapacity for work: supplementary provisions

8.—(1) In the Contributions and Benefits Act, after section 167C (inserted by Article 7) insert—

“Incapacity for work: persons to be treated as incapable or capable of work.

167D.—(1) Regulations may provide that a person shall be treated as capable of work, or as incapable of work, in such cases or circumstances as may be prescribed.

(2) Regulations may, in particular, provide that a person shall be treated as capable of work if he does work of a prescribed description, or more than the prescribed amount of work of a prescribed description.

Accordingly regulations may provide that a person shall not be treated as capable of work by reason only of his doing such work as may be prescribed, or no more than the prescribed amount of work of a prescribed description.

Incapacity for work: disqualification, etc.

167E.—(1) Regulations may provide for disqualifying a person for receiving any benefit, allowance or other advantage under any provision for the purposes of which this Part of this Act applies, or, in such cases as may be prescribed, provide that a

person shall be treated as capable of work, if—

- (a) he has become incapable of work through his own misconduct;
- (b) he fails without good cause to attend for or submit himself to such medical or other treatment as may be required in accordance with the regulations; or
- (c) he fails without good cause to observe any prescribed rules of behaviour.

(2) Regulations shall provide that any such disqualification shall be, or as the case may be that the person shall be treated as capable of work, for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act.

(3) Regulations may prescribe for the purposes of this section—

- (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or
- (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

Incapacity for work: work as councillor to be disregarded.

167F.—(1) In determining whether a person is capable or incapable of work, there shall be disregarded any work which that person has undertaken as a councillor.

(2) For this purpose “councillor” means a member of a district council.

(3) The reference in subsection (1) above to the work which a person undertakes as a councillor shall be taken to include any work which he undertakes as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.

(4) In making any such determination as is mentioned in subsection (1) above a person shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this subsection.

The “pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into operation of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989, which made provision corresponding to the provision made by this section).

Incapacity for work: supplementary provisions.

167G.—(1) The provisions of this Part of this Act do not apply—

- (a) for the purposes of Part V of this Act (benefit for industrial injuries: see section 94(6) above);
- (b) for the purposes of Part XI of this Act (statutory sick pay: see section 147(4) above); or
- (c) for such other purposes as may be prescribed.

(2) In this Part of this Act—

“prescribed” means specified in or determined in accordance with regulations; and

“week” means any period of 7 days.”

(2) In Part II of the Administration Act (adjudication), after section 59 insert—

“Incapacity for work

Adjudication: incapacity for work.

59A.—(1) The following provisions apply in relation to the determination, for any purpose for which the provisions of Part XIIA of the Contributions and Benefits Act apply, whether a person—

(a) is, or is to be treated as, capable or incapable of work; or

(b) falls to be disqualified for any period in accordance with regulations under section 167E of that Act;

and to the determination for any such purpose of such other related questions as may be prescribed.

(2) Provision may be made by regulations for a determination made for one such purpose to be treated as conclusive for another such purpose.

Regulations may in particular provide that a determination that a person is disqualified for any period in accordance with regulations under section 167E of the Contributions and Benefits Act shall have effect for such purposes as may be prescribed as a determination that he is to be treated as capable of work for that period, and *vice versa*.

(3) Provision may be made by regulations for questions of such descriptions as may be prescribed to be determined by an adjudication officer, notwithstanding that other questions fall to be determined by another authority.

(4) Provision may be made by regulations—

(a) requiring a social security appeal tribunal to sit with one or more medical assessors in such classes of case as may be prescribed; and

(b) as to the constitution of panels of medical practitioners to act as medical assessors in such cases;

and regulations under this subsection may confer on the President, or such other person as may be prescribed, such functions as may be prescribed.”

(3) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations made under any of the following provisions shall be subject to the confirmatory procedure—

(a) in the Contributions and Benefits Act—

section 167A(2), (3) or (4);

section 167B(4)(d), (6), (7) or (8);

section 167C(2) or (3);

section 167D;

section 167E(1), (2) or (3); or

section 167G(1)(c);

(b) in the Administration Act, section 59A(2), (3) or (4).

Power to provide for the transition to the new test of incapacity for work

9.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of, or in connection with, the transition to the test of incapacity for work provided for by Articles 7 and 8.

Nothing in the following provisions of this Article shall be construed as restricting the generality of that power.

(2) In this Article—

“commencement” means the commencement of Articles 7 and 8; and

“prescribed” means prescribed by regulations under this Article.

(3) Regulations under this Article may provide—

(a) that days of incapacity for work before commencement, and such other days as may be prescribed, shall be taken into account for the purposes of section 167B(3) of the Contributions and Benefits Act (period from which the all work test applies);

(b) that a person’s continued enjoyment after commencement of any allowance or other advantage under any provision for the purposes of which Part XIIA of the Contributions and Benefits Act applies shall, except as may be prescribed, be subject to satisfying the test of incapacity for work under that Part; and

(c) for the determination in accordance with that Part of the question whether the person is incapable of work.

(4) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(5) For the period of four years from the making of this Order a statutory rule which contains (whether alone or with other provisions) any regulations made under this Article shall be subject to the confirmatory procedure.

(6) A statutory rule—

(a) which contains (whether alone or with other provisions) any regulations made under this Article; and

(b) which is not subject to the confirmatory procedure,
shall be subject to negative resolution.

Rate of statutory sick pay

10.—(1) In section 153(1) of the Contributions and Benefits Act (statutory sick pay: rate of payment), for the words following “at the weekly rate of” substitute “£52.50”.

(2) Any order under section 132 of the Administration Act (annual up-rating of benefits) made by the Department before the commencement of this Article shall include provision making such increase (if any) in the sum specified in the amendment made by paragraph (1) as the amount of statutory sick pay as is necessary to make that sum equal to the higher rate of statutory sick pay payable after the order comes into operation.

(3) For section 153(2)(a) of the Contributions and Benefits Act substitute—

“(a) amend subsection (1) above so as to substitute different provision as to the weekly rate or rates of statutory sick pay; and”.

(4) In sections 151(4) and 154(2)(b) of that Act for “the appropriate weekly rate set out in” substitute “the weekly rate applicable in accordance with”.

*Other amendments***Severe disablement allowance**

11.—(1) Section 68 of the Contributions and Benefits Act (severe disablement allowance) is amended as follows.

(2) After subsection (10) insert—

“(10A) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to a severe disablement allowance for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for a severe disablement allowance as having been a day on which he was both incapable of work and disabled.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.”.

(3) In subsection (11) (regulation-making powers), after paragraph

(c) insert—

- “(cc) may prescribe evidence which is to be treated as establishing that a person suffers from loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.;”.

Disability working allowance

12.—(1) Section 128 of the Contributions and Benefits Act (disability working allowance) is amended as follows.

(2) In subsection (1) (conditions of entitlement) for “qualifies under subsection (2) below” substitute “qualifies under subsection (2) or (2A) below”.

(3) After subsection (2) insert—

“(2A) A person qualifies under this subsection if—

- (a) on one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made he was engaged in training for work; and
- (b) a relevant benefit was payable to him for one or more of the 56 days immediately preceding—
 - (i) the first day of training for work falling within the 56 days mentioned in paragraph (a) above; or
 - (ii) an earlier day of training for work which formed part of the same period of training for work as that day.

(2B) For the purposes of subsection (2A) above—

- (a) the following are relevant benefits—

- (i) the higher rate of short-term incapacity benefit;
 - (ii) long-term incapacity benefit;
 - (iii) a severe disablement allowance;
- or a corresponding benefit under any enactment having effect in Great Britain;
- (b) “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed; and
 - (c) a period of training for work means a series of consecutive days of training for work, there being disregarded for this purpose such days as may be prescribed.”.

Consequential amendments and repeals

13.—(1) The enactments mentioned in Schedule 1 have effect subject to the amendments specified there which are consequential on the provisions of this Order.

Part I contains amendments of the Contributions and Benefits Act; and

Part II contains amendments of the Administration Act and certain other enactments.

(2) The enactments mentioned in Schedule 2 are repealed to the extent specified.

General power to make transitional and consequential provision

14.—(1) The Department may by regulations make such transitional provision, and such consequential provision or savings, as appear to it to be necessary or expedient in preparation for or in connection with the coming into force of any provision of this Order or the operation of any enactment repealed or amended by any such provision during any period when the repeal or amendment is not wholly in operation.

(2) The power conferred by paragraph (1) is not exercisable in respect of any matter for which provision may be made under Article 6 (power to provide for transition to incapacity benefit) or Article 9 (power to provide for the transition to new test of incapacity for work).

(3) Subsections (3) and (4) of section 171 of the Contributions and Benefits Act (general provisions as to regulations and orders) apply in relation to the power conferred by paragraph (1) as they apply in relation to a power conferred by that Act to make regulations.

(4) A statutory rule—

- (a) which contains (whether alone or with other provisions) any regulations made under this Article; and
- (b) which is not subject to the confirmatory procedure, shall be subject to negative resolution.

Saving for existing enactments

15.—(1) The amendments of the Contributions and Benefits Act made by this Order shall be treated as repealing and re-enacting with modifications the provisions of that Act relating to incapacity for work, so that, subject to any amendment, repeal or revocation—

- (a) any reference in any enactment to any such provision shall be construed as a reference to the corresponding new provision or, as the case may be, to the provision as amended by this Order; and
- (b) instruments made under any such provision—
 - (i) shall continue in force and have effect as if made under the corresponding new provision or, as the case may be, the provision as amended by this Order; and

- (ii) shall be construed as if originally so made.
- (2) In any enactment, subject to any amendment—
 - (a) any reference to sickness benefit shall be construed as a reference to short-term incapacity benefit at the lower rate; and
 - (b) any reference to invalidity benefit or invalidity pension shall be construed as a reference to short-term incapacity benefit at the higher rate or long-term incapacity benefit.
- (3) In this Article—
 - “enactment” includes an enactment contained in an instrument;
 - “instrument” has the meaning given by section 1(c) of the Interpretation Act (Northern Ireland) 1954.

N.H. Nicholls
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS OF THE CONTRIBUTIONS AND BENEFITS ACT

1. In section 4 of the Contributions and Benefits Act (payments treated as remuneration and earnings), in subsection (3) (meaning of “sickness payment”) omit the words “, within the meaning of section 57 below”.

2.—(1) Section 20 of the Contributions and Benefits Act (descriptions of contributory benefits) is amended as follows.

(2) In subsection (1) (list of benefits), for paragraphs (b) and (c) substitute—

- “(b) incapacity benefit, comprising—
(i) short-term incapacity benefit; and
(ii) long-term incapacity benefit;”.

(3) In subsection (2)—

(a) in the definition of “long-term benefit” for paragraph (a) substitute—

“(a) long-term incapacity benefit;”;

(b) in the definition of “short-term benefit” for paragraph (b) substitute—

“(b) short-term incapacity benefit; and”.

3.—(1) Section 21 of the Contributions and Benefits Act (contribution conditions) is amended as follows.

(2) In subsection (1) (benefits which are subject to contribution conditions being satisfied) for “other than invalidity benefit” substitute “other than long-term incapacity benefit under section 30A below or short-term or long-term incapacity benefit under section 40 or 41 below”.

(3) In subsection (2), in the first part of the table (classes of contributions relevant in relation to benefits), for “Sickness benefit” substitute “Short-term incapacity benefit under section 30A below”.

4. In section 25(6) of the Contributions and Benefits Act (unemployment benefit: increases to be disregarded in determining rate of relevant retirement pension)—

(a) in paragraph (a) for “invalidity” substitute “incapacity”; and

(b) in paragraph (d) after “under section 150 of the Great Britain Administration Act” insert “of the sums mentioned in subsection (1)(e) of that section”.

5. After section 25 of the Contributions and Benefits Act (unemployment benefit) insert—

“Determination of days for which unemployment benefit is payable.

25A.—(1) For the purposes of any provisions of this for Act relating to unemployment benefit—

- (a) subject to the provisions of this Act, a day shall not be treated in relation to any person as a day of unemployment unless on that day—
 - (i) he is capable of work; and
 - (ii) he is, or is deemed in accordance with regulations to be, available to be employed in employed earner’s employment; and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment;
- (b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that person would not work in that employment or in any other employed earner’s employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;
- (c) “day of interruption of employment” means a day which is a day of unemployment or of incapacity for work;
- (d) the following periods, namely—
 - (i) any 2 days of unemployment, whether consecutive or not, within a period of 6 consecutive days;
 - (ii) any 4 or more consecutive days of incapacity for work,
 shall be treated as a period of interruption of employment, and any 2 such periods not separated by a period of more than 8 weeks (“week” for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;
- (e) Sunday or such other day in each week as may be prescribed shall not be treated as a day of unemployment and shall be disregarded in computing any period of consecutive days.

(2) For the purposes of any provision of this Act relating to unemployment benefit, references to a day or period of incapacity for work have the same meaning as they have for the purposes of incapacity benefit.

(3) Regulations may—

- (a) make provision (subject to subsections (1) and (2) above) as to the days which are or are not to be treated for the purposes of unemployment benefit as days of unemployment;
- (b) make provision with respect to—
 - (i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner’s employment in that week;
 - (ii) the meaning of “week” in subsection (1)(a) above or in any other provision relating to a person’s actively seeking employed earner’s employment;
- (c) prescribe respective circumstances in which, for the purposes of subsection (1) (b) above—
 - (i) employment which has not been terminated may be treated as if it had been terminated; or
 - (ii) a day which falls in a period when an employed earner’s employment is suspended but does not fall to be so treated and which, apart from

the regulations, would not fall to be treated as a day of interruption of employment may be treated as such a day.

(4) Where it has been determined that a person is to be deemed in accordance with regulations to be available for employment in employed earner's employment in respect of any day, the question of his actual availability for such employment in respect of that day may be subsequently determined on a review of the determination as to his deemed availability.

(5) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner's employment in any week, the question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.

(6) If regulations under paragraph (a) of subsection (3) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—

- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
- (b) for calculating or estimating that person's level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
- (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

In this subsection "post-employment period" means a period following the termination of a person's employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.

Power to amend provisions as to days of entitlement.

25B.—(1) Subsections (1) and (3) of section 25A above shall, on and after such day as the Department may by order appoint, have effect—

- (a) with the substitution for subsection (1)(b) of the following paragraph—
 - “(b) where a person is an employed earner and his employment as such has not been terminated but has been suspended by the employer, a day shall not be treated in relation to that person as a day of unemployment unless it is the 7th or a later day in a continuous period of days on which that suspension has lasted, there being disregarded for the purposes of determining the first 6 days of the period (but for no other purpose)—
 - (i) Sunday or such other day in each week as may have been prescribed under paragraph (e) of this subsection;
 - (ii) any day of recognised or customary holiday in connection with the suspended employment;
 - (iii) such other day or days as may be prescribed;”;
- (b) with the substitution for subsection (3)(c) of the following paragraph—

- “(c) prescribe respective circumstances in which for the purposes of subsection (1)(b) above an employed earner’s employment may be treated—
- (i) as having been or, as the case may be, as not having been terminated; or
 - (ii) as having been or, as the case may be, as not having been suspended.”.

(2) Regulations may provide—

- (a) that paragraph (d) of section 25A(1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations; and
- (b) that sub-paragraph (ii) of that paragraph shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days, as may be specified in the regulations.

(3) Regulations under subsection (2)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.”.

6. In section 30 of the Contributions and Benefits Act (abatement of unemployment benefit on account of payments of occupational or personal pension), in subsection (3)(e) for “section 26(1) above and section 57(1) below” substitute “sections 25A(1) and 26(1) above”.

7. Omit sections 31 to 34 of the Contributions and Benefits Act (sickness benefit and invalidity benefit).

8. For section 40 of the Contributions and Benefits Act (invalidity pension for widows) substitute

“Long-term incapacity benefit for widows.

40.—(1) Subject to subsection (2) below, this section applies to a woman who—

- (a) on her late husband’s death is not entitled to a widowed mother’s allowance or subsequently ceases to be entitled to such an allowance;
- (b) is incapable of work at the time when he dies or when she subsequently ceases to be so entitled;
- (c) either—
 - (i) would have been entitled to a widow’s pension if she had been over the age of 45 when her husband died or when she ceased to be entitled to a widowed mother’s allowance; or
 - (ii) is entitled to such a pension with a reduction under section 39(4) above; and
- (d) is not entitled to incapacity benefit apart from this section.

(2) This section does not apply to a woman unless—

- (a) her husband died after 5th April 1979; or
- (b) she ceased to be entitled to a widowed mother’s allowance after that date (whenever her husband died).

(3) A woman to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—

- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
- (b) is after that time and after the first 364 days of incapacity for work in that period.

(4) A woman to whom this section applies who is not entitled to long-term incapacity benefit under subsection (3) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—

- (a) falls in a period of incapacity for work that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and
- (b) is after that time and after the first 196 days of incapacity for work in that period.

For the purposes of this subsection a woman is terminally ill if she suffers from a progressive disease and her death in consequence of that disease can reasonably be expected within 6 months.

(5) The weekly rate of incapacity benefit payable under this section is—

- (a) if the woman is not entitled to a widow's pension, that which would apply if she were entitled to long-term incapacity benefit under section 30A above; and
- (b) if she is entitled to a widow's pension with a reduction under section 39(4) above, the difference between the weekly rate of that pension and the weekly rate referred to in paragraph (a) above.

(6) A woman is not entitled to incapacity benefit under this section if she is over pensionable age; but if she has attained pensionable age and the period of incapacity for work mentioned in subsection (3)(a) or (4)(a) above did not terminate before she attained that age—

- (a) she shall, if not otherwise entitled to a Category A retirement pension, be entitled to such a pension; and
- (b) the weekly rate of the Category A retirement pension to which she is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.

(7) Where a woman entitled to short-term incapacity benefit under subsection (4) above attains pensionable age and defers her entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.

(8) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (4) above.”.

9. For section 41 of the Contributions and Benefits Act (invalidity pension for widowers) substitute—

“Long-term incapacity benefit for widowers.

41.—(1) This section applies to a man whose wife has died on or after 6th April 1979 and who either—

- (a) was incapable of work at the time when she died; or
- (b) becomes incapable of work within the prescribed period after that time;

and is not entitled to incapacity benefit apart from this section.

(2) A man to whom this section applies is entitled to long-term incapacity benefit under this section for any day of incapacity for work which—

- (a) falls in a period of incapacity for work that began before the time when his wife died or within the prescribed period after that time; and
- (b) is after that time and after the first 364 days of incapacity for work in that period.

(3) A man to whom this section applies who is not entitled to long-term incapacity benefit under subsection (2) above, but who is terminally ill, is entitled to short-term incapacity benefit under this section for any day of incapacity for work which—

- (a) falls in a period of incapacity for work that began before the time when his late wife died or within the prescribed period after that time; and
- (b) is after that time and after the first 196 days of incapacity for work in that period.

For the purposes of this subsection a man is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

(4) The weekly rate of incapacity benefit payable under this section is that which would apply if he were entitled to long-term incapacity benefit under section 30A above.

(5) A man is not entitled to incapacity benefit under this section if he is over pensionable age; but if he has attained pensionable age, and the period of incapacity for work mentioned in subsection (2)(a) or (3)(a) above did not terminate before he attained that age—

- (a) he shall, if not otherwise entitled to a Category A retirement pension and also not entitled to a Category B retirement pension by virtue of section 51 below, be entitled to a Category A retirement pension; and
- (b) the weekly rate of the Category A retirement pension to which he is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.

(6) Where a man entitled to short-term incapacity benefit under subsection (3) above attains pensionable age and defers his entitlement to a Category A retirement pension or makes an election under section 54(1) below, the days of incapacity for work falling within the period of incapacity for work mentioned in that subsection shall, for the purpose of determining any subsequent entitlement to incapacity benefit under section 30A above or the rate of that benefit, be treated as if they had been days of entitlement to short-term incapacity benefit.

(7) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable under subsection (3) above.”.

10. For section 42 of the Contributions and Benefits Act (entitlement to invalidity pension on termination of employment after period of entitlement to disability working allowance) substitute—

“Entitlement under s. 40 or 41 after period of employment or training for work.

42.—(1) Where—

- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and
- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and
- (c) he qualified for a disability working allowance for that week by virtue of incapacity benefit under section 40 or 41 above having been payable to him; and

- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for incapacity benefit under that section for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(2) Where—

- (a) a person becomes engaged in training for work; and
(b) he was entitled to incapacity benefit under section 40 or 41 above for one or more of the 56 days immediately before he became so engaged; and
(c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for incapacity benefit under that section for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

(3) For the purposes of this section “week” means any period of 7 days.”

11. In section 44(4) of the Contributions and Benefits Act (Category A retirement pension: basic rate), for “the rate of sickness benefit under section 31(6) above” substitute the “rate of short-term incapacity benefit under section 30B(3) above”.

12. In section 46 of the Contributions and Benefits Act (modifications of section 45 for calculating additional pension in certain benefits), omit—

- (a) subsection (1); and
(b) in subsection (2), the words “or 41(4)”.

13. In section 47 of the Contributions and Benefits Act (increase of Category A retirement pension for invalidity), in subsection (1) (twice) and in subsection (5) for “invalidity allowance” substitute “age addition to long-term incapacity benefit by virtue of regulations under section 30B(7) above”.

14. Omit section 57 of the Contributions and Benefits Act (determination of days for which benefit is payable).

15. Omit section 58 of the Contributions and Benefits Act (incapacity for work: work as councillor to be disregarded).

16. Omit section 59 of the Contributions and Benefits Act (invalidity benefit: disqualifications, etc.).

17.—(1) Section 61 of the Contributions and Benefits Act (exclusion of increase of benefit in case of failure to satisfy contribution condition) is amended as follows.

(2) In subsection (2) for paragraph (b) substitute—

“(b) to short-term incapacity benefit at a rate determined under section 30B(3) above;”.

(3) In that subsection omit—

- (a) paragraph (c) and the word “or” preceding it; and
- (b) the words “or invalidity pension” (twice).

18.—(1) Section 68 of the Contributions and Benefits Act (severe disablement allowance) is amended as follows.

(2) In subsection (8) (daily rate of allowance to be 1/6th of appropriate weekly rate) for “one sixth of the weekly rate referred to in subsection (7) above” substitute “1/7th of the weekly rate”.

(3) In subsection (11) (regulation-making powers), for paragraph (c) substitute—

- “(ca) may prescribe the circumstances in which a person is or is not to be treated as incapable of work;
- (cb) may prescribe the circumstances in which a person is or is not to be treated as receiving full-time education;”.

(4) In subsection (11), for paragraph (d) (reduction in respect of councillor’s allowance) substitute —

“and

(d) may make in relation to severe disablement allowance any such provision as is made in relation to incapacity benefit by section 30E above.”.

(5) In subsection (11), omit paragraph (e) and the word “and” preceding it.

(6) Omit subsection (12).

(7) For subsection (13) substitute—

“(13) In this section “retiring age” means 70 in the case of a man and 65 in the case of a woman.”.

19. In section 82 of the Contributions and Benefits Act (short-term benefit: increase for adult dependants)—

- (a) in subsection (1) omit “or sickness benefit” and for “the benefit in question” substitute “that benefit”; and
- (b) in subsection (2)(a) omit “or sickness benefit”.

20. In section 83(1) of the Contributions and Benefits Act (pension increase for dependent wife: pensions to which section applies), omit paragraph (b).

21. In section 84 of the Contributions and Benefits Act (pension increase for dependent husband), for subsection (1)(a) substitute—

“(a) which began immediately upon the termination of a period for which the pensioner was entitled—

- (i) to an increase in unemployment benefit by virtue of section 82(3) above; or
- (ii) to an increase in incapacity benefit by virtue of any provision of regulations under section 86A below prescribed for the purposes of this sub-paragraph; and”.

22. In section 85(1) of the Contributions and Benefits Act (pension increase for non-spouse having care of dependent child: pensions to which section applies), omit paragraph (c).

23. Omit section 86 of the Contributions and Benefits Act (increase of wife’s invalidity pension for dependent husband).

24.—(1) Section 87 of the Contributions and Benefits Act (rate of increase where associated retirement pension is attributable to reduced contributions) is amended as follows.

(2) In subsection (1)(a) (benefits in relation to which the section applies)—

(a) for sub-paragraph (ii) substitute—

“(ii) to short-term incapacity benefit under section 30A(2)(b) above;”;

(b) omit sub-paragraph (iii).

(3) For the words in subsection (1) following paragraph (b) substitute—

“the amount of any increase of the benefit attributable to sections 82 to 86A above shall be determined in accordance with regulations under this section.”.

(4) In subsections (1)(b) and (2) omit “or invalidity pension”.

25. For section 88 of the Contributions and Benefits Act (pension increases to be in respect of only one adult dependant) substitute—

“Increases to be in respect of only one adult dependant.

88. A person shall not under or by virtue of sections 83 to 86A above be entitled for the same period to an increase of benefit in respect of more than one person.”.

26. In section 89 of the Contributions and Benefits Act (references to earnings to include occupational and personal pensions) for “sections 82 to 86 above” substitute “sections 82 to 86A above, and in regulations under section 86A above,”.

27. In section 91(1) of the Contributions and Benefits Act (effect of trade dispute on entitlement to increases: increases to which section applies), in paragraph (a) for “under sections 82 to 88 above” substitute “under or by virtue of sections 82 to 88 above”.

28. In section 93 of the Contributions and Benefits Act (dependency increases on termination of employment after period of entitlement to disability working allowance)—

(a) for paragraph (a) substitute—

“(a) a person becomes entitled—

(i) to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit, by virtue of section 30C(5) or (6) or section 42 above;
or

(ii) to severe disablement allowance by virtue of section 68(10) or (10A) above; and”;

(b) in paragraph (b) and the closing words for “pension or” (four times) substitute “benefit or”.

29. Omit section 102 of the Contributions and Benefits Act (sickness benefit in respect of industrial injury).

30. In section 121(1) of the Contributions and Benefits Act (interpretation of Parts I to VI), for the definition of “day of incapacity for work” and “day of interruption of employment” substitute—

““day of interruption of employment” has the meaning assigned by section 25A(1)(c) above;”.

31. In section 125(1) of the Contributions and Benefits Act (income support: trade disputes), in the closing words, omit “by reason of disease or bodily or mental disablement”.

32. In section 128 of the Contributions and Benefits Act (disability working allowance), for subsection (2)(a)(i) substitute—

“(i) the higher rate of short-term incapacity benefit or long-term incapacity benefit;”.

33. In section 146(1) of the Contributions and Benefits Act (qualifying benefits for purposes of Christmas bonus for pensioners), for paragraph (b) substitute—

“(b) long-term incapacity benefit;”.

34. In section 147(4) of the Contributions and Benefits Act (employer’s liability to pay statutory sick pay: days to be treated as days of incapacity for work), for the words from “a day shall not be treated as a day” to “unless on that day” substitute “a day of incapacity for work in relation to a contract of service means a day on which”.

35. In section 159(1) of the Contributions and Benefits Act (interpretation of Part XI), in the definition of “period of interruption of employment”—

(a) omit “, sickness benefit and invalidity benefit”;

(b) for “57(1)(d)” substitute “25A(1)(d)”.

36. In section 171 of the Contributions and Benefits Act (regulations and orders), in subsection (5) (powers excepted from general provision as to exercise of discretion), insert “25B(2) (a),” at the appropriate place and omit “, 57(9)(a)”.

37. In section 172(2) of the Contributions and Benefits Act (Assembly control: rules subject to confirmatory procedure)—

(a) in paragraph (a) (regulations), omit “32(2), 59(2),”;

(b) in paragraph (c) (orders), at the appropriate place insert “25B(1),” and omit “57(8),”.

38.—(1) Schedule 3 to the Contributions and Benefits Act (contribution conditions for entitlement to benefit) is amended as follows.

(2) In paragraph 2(6)(b) (meaning of “relevant benefit year” for purposes of contribution conditions for short-term incapacity benefit), for “period of interruption of employment” substitute “period of incapacity for work”.

(3) In paragraph 5(6) (widowed mother’s allowance, widow’s pension and Category A and B retirement pensions) for “an invalidity pension” substitute “long-term incapacity benefit”.

(4) In paragraph 8 (persons deemed to satisfy contribution conditions by virtue of entitlement to another short-term benefit) for “sickness benefit” (twice) substitute “short-term incapacity benefit”.

39. In Schedule 4 to the Contributions and Benefits Act (rates of benefit, etc.)—

(a) in Part I (contributory periodical benefits), omit paragraph 3; and

(b) in Part IV (increases for dependants), in paragraph 1 omit “or sickness” and sub-paragraphs (c) and (d).

40. In Schedule 5 to the Contributions and Benefits Act (increase of pension where entitlement is deferred), in paragraph 7(1)(a) for “under” (twice) substitute “by virtue of”.

41.—(1) Schedule 7 to the Contributions and Benefits Act (industrial injuries benefits) is amended as follows.

(2) In paragraph 3 (restriction on increase of unemployability supplement)—

(a) in sub-paragraph (2) omit “or an invalidity pension”; and

(b) in sub-paragraph (3) omit “or invalidity pension”.

(3) In paragraph 13(10) (retirement allowance: meaning of “day of interruption of employment”) omit “, sickness benefit or invalidity benefit”.

42.—(1) Schedule 11 to the Contributions and Benefits Act (circumstances in which entitlement to statutory sick pay does not arise) is amended as follows.

(2) In paragraph 2, for sub-paragraphs (d) and (e) substitute—

“(d) in the period of 57 days ending immediately before the relevant date the employee had at least one day on which—

- (i) he was entitled to incapacity benefit (or would have been so entitled had he satisfied the contribution conditions mentioned in section 30A(2)(a) above); or
- (ii) she was entitled to a maternity allowance; or
- (iii) he was entitled to a severe disablement allowance;”.

(3) Omit paragraph 5.

43.—(1) Schedule 12 to the Contributions and Benefits Act (relationship of statutory sick pay with benefits and other payments, etc.) is amended as follows.

(2) In paragraph 1 (day of entitlement to statutory sick pay not to count as day of incapacity for work for certain purposes), after “period of interruption of employment” insert “for the purposes of unemployment benefit or a period of incapacity for work for the purposes of incapacity benefit”.

(3) For paragraphs 3 and 4 (sickness benefit) substitute—

“Incapacity benefit

3.—(1) This paragraph and paragraph 4 below have effect to exclude, where a period of entitlement as between an employee and an employer of his comes to an end, the provisions by virtue of which short-term incapacity benefit is not paid for the first three days.

(2) If the first day immediately following the day on which the period of entitlement came to an end—

- (a) is a day of incapacity for work in relation to that employee; and
- (b) is not a day in relation to which paragraph 1 above applies by reason of any entitlement as between the employee and another employer,

that day shall, except in prescribed cases, be or form part of a period of incapacity for work notwithstanding section 30C(1)(b) above (by virtue of which a period of incapacity for work must be at least 4 days long).

(3) Where each of the first two consecutive days, or the first three consecutive days, following the day on which the period of entitlement came to an end is a day to which paragraphs (a) and (b) of sub-paragraph (2) above apply, that sub-paragraph has effect in relation to the second day or, as the case may be, in relation to the second and third days, as it has effect in relation to the first.

4.—(1) Where a period of entitlement as between an employee and an employer of his comes to an end, section 30A(3) above (exclusion of benefit for first 3 days of period) does not apply in relation to any day which—

- (a) is or forms part of a period of incapacity for work (whether by virtue of paragraph 3 above or otherwise); and
- (b) falls within the period of 57 days immediately following the day on which the period of entitlement came to an end.

(2) Where sub-paragraph (1) above applies in relation to a day, section 30A(3) above does not apply in relation to any later day in the same period of incapacity for work.”.

(4) For paragraph 5 substitute—

“Incapacity benefit for widows and widowers

5. Paragraph 1 above does not apply for the purpose of determining whether the conditions specified in section 40(3) or (4) or section 41(2) or (3) above are satisfied.”.

44.—(1) Schedule 13 to the Contributions and Benefits Act (relationship between statutory maternity pay and other benefits) is amended as follows.

(2) For paragraph 1 substitute—

“1. Except as may be prescribed, a day which falls within the maternity pay period shall not be treated for the purposes of this Act—

- (a) as a day of unemployment for the purpose of determining whether it forms part of a period of interruption of work; or
- (b) as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.”.

(3) For paragraph 2 substitute—

“Incapacity benefit

2.—(1) Regulations may provide that in prescribed circumstances a day which falls within the maternity pay period shall be treated as a day of incapacity for work for the purpose of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.

(2) Regulations may provide that an amount equal to a woman’s statutory maternity pay for a period shall be deducted from any such benefit in respect of the same period and a woman shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.”.

Part II**Amendments of the Administration Act and other Enactments****Social Security Administration (Northern Ireland) Act 1992 (c. 8)**

45. In section 18(1) of the Administration Act (questions to be submitted to adjudication officer) for paragraph (c) (disqualification) substitute—

“(c) any question whether, if he otherwise had a right to it, a person would be disqualified under or by virtue of any provision of the Contributions and Benefits Act for receiving a benefit to which this section applies.”.

46. In section 23(1)(e) of the Administration Act (review of decisions) for “57(4) or (5)” substitute “25A(4) or (5)”.

47. In section 25(2)(a) of the Administration Act (supplementary provisions as to review: payments not to be affected), for “invalidity pension” substitute “incapacity benefit”.

48. In section 122(1) of the Administration Act (furnishing of information by employers: statutory sick pay and claims for other benefits)—

(a) for paragraph (a) substitute—

“(a) short-term incapacity benefit;” and

(b) for paragraph (c) substitute—

“(c) long-term incapacity benefit;”.

49. In section 124(1) of the Administration Act (furnishing of information by employers: statutory maternity pay and other benefits)—

- (a) in paragraph (b) for “sickness benefit” substitute “short-term incapacity benefit”; and
- (b) in paragraph (c) for “invalidity pension under section 33” substitute “long-term incapacity benefit under section 30A”.

50. In section 149(5)(a) of the Administration Act (Social Security Advisory Committee) in the definition of “relevant enactments”, for “and this Act” substitute “, this Act and the Social Security (Incapacity for Work) (Northern Ireland) Order 1994”.

51. In section 167(1) of the Administration Act (interpretation), omit the definition of “invalidity benefit”.

52. In Schedule 2 to the Administration Act (supplementary provisions with respect to tribunals, etc.), in paragraph 8(2) (persons to whom remuneration and travelling and other allowances may be paid), after paragraph (a) insert—

- “(aa) a person appointed as medical assessor to a social security appeal tribunal under regulations under section 59A(4) above; and”.

Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c. 19)

53. In paragraph 4(1)(b) of Schedule 2 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (rights of employee in period of notice: sickness or industrial injury benefit), for “sickness benefit” substitute “short-term incapacity benefit”.

Pension Schemes (Northern Ireland) Act 1993 (c. 49)

54.—(1) Section 42 of the Pension Schemes (Northern Ireland) Act 1993 (effect of entitlement to guaranteed minimum pensions on payment of social security benefits) is amended as follows.

(2) In subsection (1), for “, a widow’s pension or a widower’s invalidity pension” substitute “or a widow’s pension”.

(3) Omit subsection (2).

(4) For subsection (3) substitute—

“(3) Where for any period—

- (a) a person is entitled to one or more guaranteed minimum pensions; and
- (b) he is also entitled to long-term incapacity benefit under section 30A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

for that period an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions shall be deducted from any increase payable under regulations under section 30B(7) of that Act and he shall be entitled to such an increase only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.”.

(5) Omit subsection (6)(b)(i).

(6) In subsection (8), omit paragraph (a) and the word “and” immediately following it.

(7) Omit subsection (9).

55. In section 43(1) of the Pension Schemes (Northern Ireland) Act 1993 (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 42), omit the words from “in any case” to “construed”.

56. In section 44(2) of the Pension Schemes (Northern Ireland) Act 1993 (reduced benefits where minimum payments or minimum contributions paid), for “sections 34(4) and” substitute “section”.

SCHEDULE 2

Article 13(2).

Repeals

Chapter	Short title	Extent of repeal
1992 c. 7.	Social Security Contributions and Benefits (Northern Ireland) Act 1992.	<p>In section 4(3), the words “, within the meaning of section 57 below”.</p> <p>Sections 31 to 34.</p> <p>In section 46—</p> <p>(a) (a) subsection (1);</p> <p>(b) (b) in subsection (2) the words “or 41(4)”.</p> <p>Sections 57 to 59.</p> <p>In section 61(2)—</p> <p>(a) (a) paragraph (c) and the word “or” preceding it;</p> <p>(b) (b) the words “or invalidity pension” (twice).</p> <p>In section 68—</p> <p>(a) (a) in subsection (11), paragraph (e) and the word “and” preceding it;</p> <p>(b) (b) subsection (12).</p> <p>In section 82(1) and (2)(a), the words “or sickness benefit”.</p> <p>Section 83(1)(b).</p> <p>Section 85(1)(c).</p> <p>Section 86.</p> <p>In section 87—</p> <p>(a) (a) subsection (1) (a)(iii);</p>

Chapter	Short title	Extent of repeal
		(b) (b) in subsections (1)(b) and (2), the words “or invalidity pension”.
		Section 102.
		In section 114(4), “; 86”.
		In section 125(1), in the closing words, the words “by reason of disease or bodily or mental disablement”.
		In section 159(1), in the definition of “period of interruption of employment”, the words “; sickness benefit and invalidity benefit”.
		In section 171(5), “; 57(9)(a)”.
		In section 172(2)— in paragraph (a), “32(2), 59(2),”; in paragraph (c), “57(8),”.
		In Schedule 4, in Part I, paragraph 3.
		In Schedule 4, in Part IV, in paragraph 1—
	(a) (a) the words “or sickness”;	(b) (b) sub-paragraphs (c) and (d).
		In Schedule 7—
	(a) (a) in paragraph 3(2), the words “or an invalidity pension”;	(b) (b) in paragraph 3(3), the words “or invalidity pension”;
		(c) (c) in paragraph 13(10), the words “; sickness benefit or invalidity benefit”.
		In Schedule 11, paragraph 5.
1992 c. 8.	Social Security Administration (Northern Ireland) Act 1992.	In section 167(1), the definition of “invalidity benefit”.

Chapter	Short title	Extent of repeal
1993 c. 49.	Pension Schemes (Northern Ireland) Act 1993.	<p>In section 42—</p> <p>(a) (a) subsection (2);</p> <p>(b) (b) subsection (6) (b)(i);</p> <p>(c) (c) subsection (8) (a) and the word “and” immediately following it;</p> <p>(d) (d) subsection (9).</p> <p>In section 43(1), the words from “in any case” to “construed”.</p>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made only for purposes corresponding to those of the Social Security (Incapacity for Work) Act 1994.

The Order introduces a new social security benefit - incapacity benefit - which replaces sickness benefit and invalidity benefit. It also creates two tests of incapacity for work which apply generally in the social security system (Article 7).