
STATUTORY RULES OF NORTHERN IRELAND

2000 No. 404

The Social Security (Incapacity Benefit) (Miscellaneous Amendments) Regulations (Northern Ireland) 2000

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Incapacity Benefit) (Miscellaneous Amendments) Regulations (Northern Ireland) 2000 and shall come into operation on 6th April 2001.

(2) In these Regulations “the principal Regulations” means the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994(1).

(3) The Interpretation Act (Northern Ireland) 1954(2) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended in accordance with paragraphs (2) to (5).

(2) After regulation 1A(3) (disapplication of section 1(1A) of the Administration Act) there shall be inserted the following Part—

“Part IA

Contributions Conditions: Supplementary Provisions

Relaxation of the first contribution condition in certain cases

1B.—(1) For the purposes of paragraph 2(2)(a) of Schedule 3(4) (first contribution condition) a person who satisfies any of the conditions referred to in paragraph (2) shall be taken to satisfy the first contribution condition if—

(a) he paid contributions of a relevant class before the relevant time in respect of any one year; and

(b) the earnings factor is derived—

(i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year’s lower earnings limit multiplied by 25, or

(ii) from Class 2 contributions multiplied by 25.

(2) The conditions referred to in paragraph (1) are that—

(1) [S.R. 1994 No. 461](#); relevant amending regulations are [S.R. 1997 No. 483](#), [S.R. 1999 No. 346](#) and [S.R. 2000 No. 109](#)

(2) [1954 c. 33 \(N.I.\)](#)

(3) Regulation 1A was inserted by regulation 13 of [S.R. 1997 No. 483](#)

(4) Paragraph 2(2)(a) of Schedule 3 was substituted by Article 59(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

- (a) he was a person who, in the relevant tax year before the first day of incapacity for work, was entitled to invalid care allowance under section 70(5) or would have been in receipt of invalid care allowance but for the provisions of regulation 4 of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(6);
 - (b) immediately before the first day of incapacity for work, he was a person—
 - (i) who had been engaged in remunerative employment for a period of more than 2 years, and
 - (ii) who was entitled to a disability working allowance or disabled person’s tax credit, as the case may be, under section 128(7) throughout that period; or
 - (c) he is, on the first day of his incapacity for work, a person who had received incapacity benefit in the last complete tax year immediately preceding the relevant benefit year in which he again becomes entitled to that benefit.”
- (3) In regulation 3(1)(8) (days not to be treated as days of incapacity for work) after sub-paragraph (a) there shall be inserted the following sub-paragraph—
- “(aa) a day which is, for the purposes of section 30A(2A)(c)(9) (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;”
- (4) After regulation 3 there shall be inserted the following regulation—

“Days to be treated as days of incapacity for work

3A. For the purposes of incapacity benefit for persons incapacitated in youth under section 30A(2A), any day in respect of which a person is entitled to statutory sick pay immediately before the relevant day shall be treated as a day of incapacity for work.”

- (5) After Part III (rate of incapacity benefit) there shall be added the following Parts—

“Part IV

Additional Conditions for Persons Incapacitated in Youth

General

13. This Part of these Regulations applies to persons incapacitated in youth in accordance with section 30A(1)(b) and (2A)(10).

Age exception—persons aged 20 and under 25

14.—(1) For the purposes of section 30A(2A)(b) (prescribed cases in relation to persons aged under 25 and above the age 20 limit), a person falls within a prescribed case if he satisfies the conditions specified in the following paragraphs.

- (2) The conditions referred to in paragraph (1) are that he is a person who—
 - (a) registered on a course of—

(5) Section 70 was amended by regulation 2(3) of [S.R. 1994 No. 370](#)

(6) [S.R. 1979 No. 242](#); relevant amending regulations are [S.R. 1984 No. 317](#), [S.R. 1992 Nos. 6 and 557](#), [S.R. 1995 No. 150](#) and [S.R. 1996 Nos. 289 and 601](#)

(7) Section 128 was amended by Article 12 of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 ([S.I.1995/2705 \(N.I. 15\)](#)) and sections 1 and 14 of the Tax Credits Act 1999 ([c. 10](#))

(8) Regulation 3 was amended by regulation 2 of [S.R. 1999 No. 346](#) and regulation 5 of [S.R. 2000 No. 109](#)

(9) Subsection (2A) was inserted by Article 61(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(10) Subsection (1) was amended by Article 61(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

- (i) full-time advanced or secondary education, or
 - (ii) vocational or work-based training,at least 3 months before he attained the age of 20; and
 - (b) not more than one academic term immediately after the registration referred to in sub-paragraph (a), attended one or more such course of education or training as is mentioned in that sub-paragraph in the period referred to in paragraph (3).
- (3) The period mentioned in paragraph (2)(b) is a period which—
- (a) began on or before a day at least 3 months before the day on which he attained the age of 20; and
 - (b) ended on a day—
 - (i) immediately before the relevant day, or
 - (ii) falling within one of the last two complete tax years before the benefit year which would have governed a claim for incapacity benefit under section 30A(1)(a) had he been entitled to that benefit,whichever is the later.
- (4) For the purposes of this regulation a person is attending a course of education or training on any day on which the course or training is interrupted by an illness or domestic emergency.
- (5) In this regulation—
- “advanced education” means full-time education for the purposes of—
- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, or a teaching qualification; or
 - (b) any other course which is of a standard above ordinary national diploma, a national diploma of the Business and Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of sixth year studies;
- “course of education” means a course of advanced education or secondary education;
- “full-time” includes part-time where the disability from which a person suffers prevents him from attending a full-time course;
- “relevant day” has the same meaning as in section 30A(1), that is to say, the day—
- (a) in respect of which a person is entitled to claim incapacity benefit;
 - (b) which falls on any day immediately after a period of 196 consecutive days of incapacity for work; and
 - (c) which forms part of a period of incapacity for work;
- “secondary education” means a full-time course of education below a course of advanced education—
- (a) by attendance at a recognised educational establishment within the meaning of section 143(1); or
 - (b) elsewhere than at a recognised educational establishment, where the Department is satisfied that the education is equivalent to that given in a recognised educational establishment;
- “training” has the same meaning as vocational training or work-based training;

“vocational training” means training for work as defined in regulation 2 for the purposes of section 30C(6) and includes any training, instruction or tuition (of which the primary purpose is the teaching of occupational or vocational skills) received on a course provided, for persons suffering mental or physical disability, by a person recognised by the Department;

“work-based training” means vocational training undertaken on the premises of an employer.”.

Conditions relating to residence or presence

15.—(1) The prescribed conditions for the purposes of section 30A(2A)(d) as to residence or presence in Northern Ireland in relation to any person on the relevant day shall be that on that day—

- (a) he is ordinarily resident in Northern Ireland;
 - (b) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(11) or he is a person to whom paragraph (5) applies;
 - (c) he is present in Northern Ireland; and
 - (d) he has been present in Northern Ireland for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day.
- (2) Where the relevant day falls within a period in which a person—
- (a) receives tax-free emoluments; or
 - (b) is the spouse of a person who receives tax-free emoluments,

that person shall not be regarded as present in Northern Ireland unless that period is immediately preceded by a period of 4 years during which he was present in Northern Ireland for a period of not less than 156 weeks in aggregate.

(3) For the purposes of paragraph (2) “tax-free emoluments” means emoluments which are exempt from tax under any of the provisions listed in regulation 11(1) of the Child Benefit (General) Regulations (Northern Ireland) 1979(12).

(4) In determining whether a person satisfies paragraph (1), where a person is absent from Northern Ireland by reason only of the fact that—

- (a) he is abroad in his capacity as a serving member of the forces, or he is the spouse, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a serving member of the forces abroad;
- (b) he is in employment prescribed for the purposes of section 120 of the Social Security Contributions and Benefits Act 1992(13) in connection with continental shelf operations; or
- (c) he is abroad in his capacity as an airman or mariner within the meaning of regulation 80 or 84 respectively of the Social Security (Contributions) Regulations (Northern Ireland) 1979(14),

any day or period of absence shall be treated as a day on which, or period during which, the person is resident or present, as the case may be, in Northern Ireland; and for the purposes of this paragraph “serving member of the forces” has the same meaning as in regulation 1(2) of those Regulations.

(5) This paragraph applies where a person is—

(11) 1999 c. 33

(12) S.R. 1979 No. 5; regulation 11(1) was amended by regulation 3(2)(a) of S.R. 1996 No. 288

(13) 1992 c. 4; section 120 was amended by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 26 of Schedule 3 and paragraph 8 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)

(14) S.R. 1979 No. 186, to which there are amendments not relevant to these regulations

- (a) a member of a family of a national of a State contracting party to the Agreement of the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993⁽¹⁵⁾;
 - (b) a person who is lawfully working in Northern Ireland and is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam⁽¹⁶⁾ amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts⁽¹⁷⁾ providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
 - (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
 - (d) a person who has been given leave to enter, or remain in, the United Kingdom by the secretary of State upon an undertaking by another person or persons, pursuant to the immigration rules within the meaning of the Immigration Act 1971⁽¹⁸⁾, to be responsible for his maintenance and accommodation.
- (6) A person shall be treated as having satisfied the residence or presence conditions on any subsequent day of incapacity for work falling within the same period of incapacity for work where the residence or presence conditions specified in paragraphs (1) to (4) are satisfied on the first relevant day.

Circumstances in which a person is or is not to be treated as receiving full-time education

16.—(1) This regulation applies for the purposes of section 30A(7)⁽¹⁹⁾ (circumstances in which a person is or is not to be treated as receiving full-time education).

(2) A person shall be treated as receiving full-time education for any period during which—

- (a) he is aged 16 or over but under the age of 19; and
- (b) he attends a course of education for 21 hours or more a week.

(3) For the purposes of paragraph (2)(b), in calculating the number of hours a week during which a person attends a course, no account shall be taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability.

(4) In determining the duration of a period of full-time education under paragraph (2), any temporary interruption of that education may be disregarded.

(5) A person who is aged 19 or over shall not be treated for the purposes of section 30A(2A)(e) as receiving full-time education notwithstanding he is undergoing full-time education.

Circumstances in which a previous claimant who does not satisfy the age condition becomes entitled

17.—(1) This regulation applies, for the purposes of section 30A(6)⁽²⁰⁾, to a person who has previously been entitled to incapacity benefit under section 30A(1)(b) (persons incapacitated in youth) and does not satisfy the condition set out in section 30A(2A)(b) (upper age condition).

(2) A person shall be entitled to the lower rate short-term incapacity benefit where—

⁽¹⁵⁾ O.J. No. L1, 3.1.1994, p. 572

⁽¹⁶⁾ Article 310 EC (ex Article 238)

⁽¹⁷⁾ O.J. No. C340, 10.11.1997, p. 1

⁽¹⁸⁾ 1971 c. 77

⁽¹⁹⁾ Subsection (7) was added by Article 61(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

⁽²⁰⁾ Subsection (6) was added by Article 61(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

- (a) he has previously been entitled to incapacity benefit by virtue of having been a person incapacitated in youth under section 30A(1)(b) and (2A);
 - (b) his previous entitlement had not been ended by a determination (other than a determination in the circumstances applicable to a person under paragraph (3)(a) or (4)(a)) that he was, or was treated as, capable of work;
 - (c) section 30C(1)(c), (5) or (6) (days and periods of incapacity for work) or any regulation made under section 30C(4)(b) (linking provisions) does not apply in his case;
 - (d) he is aged 20 or over or, where regulation 14 would otherwise apply to him, aged 25 years or over; and
 - (e) he is a person to whom paragraph (3) or (4) applies.
- (3) This paragraph applies to a person—
- (a) whose previous entitlement to incapacity benefit for a person incapacitated in youth was terminated solely with a view to him taking up an employment or training;
 - (b) whose earnings from an employment or series of employments, which he pursued in the period from the termination of his previous entitlement to the beginning of his period of incapacity for work, were below the lower earnings limit in accordance with section 5(1)(a)(21) multiplied by 25 in any of the last three complete tax years before the beginning of the relevant benefit year; and
 - (c) who—
 - (i) in respect of the last two complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of disabled person's tax credit; or
 - (ii) within a period of 56 days before the day on which he ceased his last such employment as mentioned in sub-paragraph (b), makes a claim for incapacity benefit for persons incapacitated in youth.
- (4) This paragraph applies to a person—
- (a) whose previous entitlement to incapacity benefit for persons incapacitated in youth was terminated by reason solely of his absence from Northern Ireland by virtue of disqualification under section 113;
 - (b) who has been incapable of work for a period of 196 consecutive days from the day his absence from Northern Ireland ceased;
 - (c) who, on the first day of his incapacity for work following the day his absence from Northern Ireland ceased, is a person who had received incapacity benefit for persons incapacitated in youth in the last complete tax year immediately preceding the relevant benefit year which would have applied in his case; and
 - (d) who made his claim for benefit on a day not later than the 197th day from the day on which his absence from Northern Ireland ceased.
- (5) For the purposes of this regulation "training" has the same meaning as in regulation 14.

Persons formerly entitled to severe disablement allowance

18.—(1) Where a person is below the age of 20 immediately before 6th April 2001 and is entitled to, or receiving, severe disablement allowance by virtue of section 68(1) on or immediately before 5th April 2002, he shall, if he continues to be incapable of work in accordance with Part XIIA of the Contributions and Benefits Act, be—

(21) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30)

- (a) entitled to long-term incapacity benefit from 6th April 2002;
- (b) treated as having acquired entitlement under section 30A(1)(b) and (2A); and
- (c) treated as if section 30DD does not apply in his case.

(2) Where a person is below the age of 20 immediately before 6th April 2001 and is entitled to, or receiving, severe disablement allowance by virtue of section 68(1) and to whom section 30C(1) to (4) or section 68(10) or (10A)(22), or regulations made under section 30C(4)(b) applies on or immediately after 5th April 2002, he shall be—

- (a) entitled to long-term incapacity benefit from the relevant day;
- (b) treated as having acquired entitlement under section 30A(1)(b) and (2A); and
- (c) treated as if section 30DD does not apply in his case.

Part V

Reduction or Abatement of Incapacity Benefit for Occupational or Other Pension Payments

Permanent health insurance

19. For the purposes of section 30DD (incapacity benefit: reduction for pension payments)—

“pension payment” shall include permanent health insurance payment; and

“permanent health insurance payment” means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect, in relation to a former employee on the termination of his employment.

Disregard of certain pension payments

20. For the purposes of section 30DD(1) there shall be disregarded—

- (a) any pension payment within the meaning of section 30DD(5) made to a person as a beneficiary on the death of a member of any pension scheme;
- (b) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall; or
- (c) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50 per cent.

Date from which pension payment is to be taken into account

21. Where section 30DD(1) applies, deductions shall take effect, calculated, where appropriate, in accordance with regulation 23, from the first day of the week, commencing on Sunday, in which the pension payment is paid to a person who is entitled to incapacity benefit in that week.

Date from which the change in the rate of pension takes effect

22. Where pension payments are already in payment to a person and the rate of payment changes, the deduction at the new rate shall take effect, calculated, where appropriate, in accordance with regulation 23, from the first day of the week, commencing on Sunday, in which the new rate of the pension payment is paid.

Pension payment made other than weekly

23.—(1) Where a pension payment, or an aggregate of such payments, as the case may be, is paid to a person for a period other than a week, such payments shall be treated as being made to that person by way of weekly pension payments and the weekly amount shall be determined—

- (a) where payment is made for a year, by dividing the total by 52;
- (b) where payment is made for 3 months, by dividing the total by 13;
- (c) where payment is made for a month, by multiplying the total by 12 and dividing the result by 52;
- (d) where payment is made for 2 or more months, otherwise than for a year or for 3 months, by dividing the total by the number of months, multiplying the result by 12 and dividing the result of that multiplication by 52; or
- (e) in any other case, by dividing the amount of the payment by the number of days in the period for which it is made and multiplying the result by 7.

(2) In determining the weekly amount of the pension payment—

- (a) there shall be disregarded the sum of less than one half of a penny; and
- (b) the sum of one half of a penny or more but less than one penny shall be rounded up to one penny.

(3) In determining the weekly pension payment, where two or more pension payments are payable to a person, each pension payment shall be calculated separately in accordance with paragraph (1) before aggregating the sum of those payments for the purposes of the reduction of incapacity benefit in accordance with section 30DD(1).

Priority of deductions of pension payments taken as payable for the purposes of reduction of incapacity benefit

24. Where a reduction in the rate of incapacity benefit payable to a person falls to be made in accordance with section 30DD(1) the reduction shall be made, so far as is necessary—

- (a) initially against so much of the benefit as falls to be paid at the personal rate;
- (b) then against any increase in the benefit payable for adult dependants; and
- (c) finally against any increase in the benefit payable for dependent children.

Person whose benefit is not to be reduced under section 30DD(1)

25. Section 30DD(1) shall not apply to a person who is entitled to the highest rate of the care component of a disability living allowance under section 72. “????”

Amendment of the Social Security (Credits) Regulations

3. In regulations 8A(1) and 8B(1) of the Social Security (Credits) Regulations (Northern Ireland) 1975(**23**) (credits for unemployment and incapacity for work) “Subject to regulation 9,” shall be omitted.

Amendment of the Social Security (Claims and Payments) Regulations

4. In regulation 24 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**24**) (incapacity benefit, severe disablement allowance and maternity allowance)—

(23) S.R. 1975 No. 113; regulations 8A and 8B were inserted by regulation 2(6) of S.R. 1996 No. 430

(24) S.R. 1987 No. 465; regulation 24 was substituted by regulation 2(10) of S.R. 1994 No. 456

- (a) in paragraph (1) for “and (3)” there shall be substituted “, (3) and (3A)”;
- (b) in paragraph (2) for “paragraph (3)” there shall be substituted “paragraphs (3) and (3A)”;
and
- (c) after paragraph (3) there shall be inserted the following paragraph—

“(3A) Where the amount of incapacity benefit payable after reduction for pension payments under section 30DD of the Contributions and Benefits Act (including any reduction for other purposes) is less than £5 a week, the Department may direct that it shall be paid (whether in advance or in arrears) at such intervals as may be specified not exceeding 12 months.”.

Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations

5. In regulation 5(2) of the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(25) (offsetting prior payment against subsequent award), in Case 3 after “allowance”, in both places where it occurs, there shall be inserted “or incapacity benefit for persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act”.

Saving

6. Where, on any day before the coming into operation of these Regulations, a person is entitled to incapacity benefit and continues, on that day or any day immediately after the coming into operation of these Regulations, to be entitled to incapacity benefit, whether or not by virtue of section 30C of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the principal Regulations shall have effect as if these Regulations had not been made.

Revocations

7. The Regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3) of that Schedule.

Sealed with the Official Seal of the Department for Social Development on 21st December 2000.

L.S.

John O'Neill
Senior Officer of the
Department for Social Development