

2002 No. 86

SOCIAL SECURITY

**The Social Security (Incapacity) (Miscellaneous Amendments)
Regulations (Northern Ireland) 2002**

Made 7th March 2002

Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by sections 167D and 171(1) to (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), Article 6(1) and (6) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(b) and Article 75(5) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(c), and now vested in it(d), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Incapacity) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002 and shall come into operation—

(a) for the purposes of this regulation and regulation 3, on 5th April 2002; and

(b) for all other purposes, on 8th April 2002.

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

Amendment of the Social Security (Incapacity for Work) (General) Regulations

2.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(f) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 10A(g) (certain persons participating in approved work to be treated as incapable of work), in paragraph (4)—

(a) 1992 c. 7; section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and section 171(2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Order 1999 (S.I. 1999/671)

(b) S.I. 1994/1898 (N.I. 12)

(c) S.I. 1999/3147 (N.I. 11)

(d) See Article 8(b) of S.R. 1999 No. 481

(e) 1954 c. 33 (N.I.)

(f) S.R. 1995 No. 41; relevant amending regulations are S.R. 1999 No. 428, S.R. 2000 No. 109 and S.R. 2001 No. 316

(g) Regulation 10A was inserted by regulation 7(3) of S.R. 2000 No. 109

- (a) in the definition of “approved work” for the words from “by the Department” to the end there shall be substituted “with an employer in respect of him by an officer of, or a person providing services to, the Department who has been authorised by the Department for the purpose”; and
- (b) in the definition of “trial basis” for the words from “between” to the end there shall be substituted “between—
 - (a) the person;
 - (b) an officer of, or a person providing services to, the Department who has been authorised by the Department for the purpose; and
 - (c) an employer,
 in relation to the approved work.”.
- (3) In regulation 17(a) (exempt work), subject to regulation 4(1)—
 - (a) in paragraph (1) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
 - “(a) work in respect of which the required notice is given, and—
 - (i) in respect of which the earnings in any week do not exceed £20.00; or
 - (ii) which is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or
 - (iii) which is supervised by a person employed by a public authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities; or
 - (iv) to which paragraph (1A) applies;”;
 - (b) after paragraph (1) there shall be inserted the following paragraphs—
 - “(1A) This paragraph applies in the case of a person whose circumstances are specified—
 - (a) in sub-paragraph (a) of paragraph (1B), to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph;
 - (b) in sub-paragraph (a) of paragraph (1C), to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph; and
 - (c) in sub-paragraph (a) of paragraph (1D), to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph.
 - (1B) For the purposes of paragraph (1A)(a)—

(a) Regulation 17 was amended by Article 8(3) of S.R. 1999 No. 428 (C. 32) and regulation 4 of S.R. 2001 No. 316

- (a) the specified circumstances are where—
 - (i) no work to which paragraph (1A) applies has previously been undertaken by that person; or
 - (ii) since the beginning of the last period during which any work to which that paragraph applies was previously undertaken by him, the person has ceased to be entitled, throughout a period exceeding 8 continuous weeks, to a relevant benefit; and
- (b) the specified period is the period of 26 weeks beginning with the first day on which the work is undertaken.
- (1C) For the purposes of paragraph (1A)(b)—
 - (a) the specified circumstances are where—
 - (i) work to which paragraph (1A) applies has previously been undertaken by that person during a period specified in paragraph (1B)(b); and
 - (ii) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b), he is likely to improve his capacity to engage in full-time work; and
 - (b) the specified period is the period of 26 weeks beginning immediately after the end of the period specified in paragraph (1B)(b).
- (1D) For the purposes of paragraph (1A)(c) above—
 - (a) the specified circumstances are where—
 - (i) work to which paragraph (1A) applies has previously been undertaken by that person;
 - (ii) not less than 52 weeks have elapsed since the end of the period specified in paragraph (1B)(b) or (1C)(b) or in sub-paragraph (b) during which such work was last undertaken by him;
 - (iii) head (ii) of paragraph (1B)(a) does not apply in his case; and
 - (iv) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b), he is likely to improve his capacity to engage in full-time work; and
 - (b) the specified period is the period of 52 weeks which begins with the first day on which the work is undertaken.
- (1E) In this regulation—
 - (a) evidence from an officer of, or person providing services to, the Department who is authorised by the Department for the purpose; and

(b) evidence (if any) from any other person (including the person undertaking the work),
or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“relevant benefit” means—

(a) incapacity benefit, severe disablement allowance, income support or housing benefit under the Contributions and Benefits Act; or

(b) credits under regulations under section 22(5)(a) of that Act,

in connection with the entitlement to which the question of the person’s capacity or incapacity for work arises under that Act;

“the required notice” means, in relation to work referred to in any of heads (i) to (iv) of paragraph (1)(a), notice to the effect that the person is undertaking, or is about to undertake the work, given in writing to the Department by that person or another person acting on his behalf—

(a) in the case of work referred to in paragraph (1)(a)(i) to (iii), at any time before the person ceases to undertake the work; and

(b) in the case of work referred to in paragraph (1)(a)(iv), no later than the end of the period of 42 days which begins with the day on which the work begins;

“voluntary organisation” means a body, other than a public authority, the activities of which are carried on otherwise than for profit.”; and

(c) in paragraph (2)—

(i) in sub-paragraph (a) for “paragraph (1)(a)” there shall be substituted “paragraph (1)(a)(ii) to (iv)”, and

(ii) in sub-paragraph (b) for “paragraph (1)(a)(i)” there shall be substituted “paragraph (1)(a)(iv)”.

Amendment of the Social Security (Incapacity Benefit) Regulations

3. In regulation 18 of the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994^(b) (persons formerly entitled to severe disablement allowance), for “immediately before 6th April 2001”, in both places where those words occur, there shall be substituted “on 6th April 2001”.

(a) Section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

(b) S.R. 1994 No. 461; regulation 18 was added by regulation 2(5) of S.R. 2000 No. 404

Transitional provisions

4.—(1) Where, at any time during the pre-commencement period, a person was undertaking work of a kind described in regulation 17(1)(a) of the Social Security (Incapacity for Work) Regulations (Northern Ireland) 1995 as then in operation (work undertaken on the advice of a doctor), that regulation 17 shall, until the end of the day specified in paragraph (3) continue to apply in his case as if regulation 2(3) had not come into operation.

(2) Where, at any time during the pre-commencement period, a person was, by virtue of regulation 7(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(a) deemed to be incapable of work notwithstanding that he was undertaking work for more than 16 hours in any week, that regulation 7 shall, until the end of the day specified in paragraph (3), continue to apply in his case as if regulation 5 had not come into operation.

(3) The day referred to in paragraphs (1) and (2) above is—

(a) 6th April 2003;

(b) where no work of a kind referred to in paragraph (1) or (2) is undertaken by that person at any time during a period of 57 continuous days, the day which is the last day of that period; or

(c) the day on which the period of incapacity for work which, on the day on which these Regulations come into operation, has effect in relation to that person comes to an end,

whichever first occurs.

(4) In this regulation—

“period of incapacity for work” is to be construed in accordance with section 30C(1)(b) and (c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b);

“pre-commencement period” means the period which began 56 days before the day on which these Regulations come into operation and ended on the day preceding that day.

Revocation

5. Regulation 7 of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 is hereby revoked.

Sealed with the Official Seal of the Department for Social Development
on 7th March 2002.

(L.S.)

John O'Neill

Senior Officer of the Department for Social Development

(a) S.R. 1995 No. 35

(b) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 as they relate to the circumstances in which a person is to be treated as capable of work for the purposes of entitlement to certain social security benefits—

regulation 2(2) amends regulation 10A by substituting references to officers of, and persons providing services to, the Department for references to the Department of Higher and Further Education, Training and Employment;

regulation 2(3) amends regulation 17 in relation to the categories of work which may be undertaken by a person without his being treated as being capable of work; in particular, the requirement that some categories of work may be undertaken only on medical advice has been replaced with a requirement that notice must be given to the Department that the work is being done and changes are made in those categories of work, by the substitution of work which gives rise to earnings of no more than £20 per week; work under supervision; and work during a maximum period of 26 weeks or (where beneficial to the person's capacity for future full-time employment) 52 weeks.

Regulation 3 corrects a reference in the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994 as they relate to persons aged less than 20 on 6th April 2001 who have been in receipt of severe disablement allowance.

Regulation 4 makes transitional provision, in connection with the amendments made by regulation 2(3), in relation to persons who, shortly before these Regulations come into operation, are not regarded as capable of work by virtue of the provisions which are now to be amended or revoked.

Regulation 5 makes a consequential revocation.

These Regulations correspond to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

These Regulations do not impose a charge on business.

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