Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART II

CONTRIBUTORY BENEFITS

Provisions relating to unemployment benefit, sickness benefit and invalidity benefit

57 Determination of days for which benefit is payable

(1) For the purposes of any provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit—

(a) subject to the provisions of this Act, a day shall not be treated in relation to any person—

(i) as a day of unemployment unless on that day he is capable of work and 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; or

(ii) as a day of incapacity for work unless on that day he is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement,

("work", in this paragraph, meaning work which the person can reasonably be expected to do);

(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 or of incapacity for work and shall be disregarded in computing any period of consecutive days.

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

(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, sickness benefit and invalidity benefit as days of unemployment or of incapacity for work;

(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)(i) 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.

(7) In subsection (6) above "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.

(8) Subsections (1) and (3) above shall, on and after such day as the Secretary of State may by order appoint, have effect—

(a) with the substitution for paragraph (b) of subsection (1) 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;"; and

(b) with the substitution for paragraph (c) of subsection (3) 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.".

(9) The Secretary of State may by regulations provide—

(a) that paragraph (d) of subsection (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 in such cases as may be specified in the regulations, as if—

(i) the period of 4 days mentioned there were such lesser period as may be specified; and

(ii) the word "consecutive" were omitted.

(10) Regulations under subsection (9)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.

58 Incapacity for work: work as councillor to be disregarded

(1) In determining for the purposes of any of the provisions of this Part of this Act which relate to sickness benefit or invalidity benefit whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.

(2) Where the net amount of councillor's allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any sickness benefit or invalidity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(3) In determining whether a person satisfies the conditions of entitlement for any such benefit, he 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.

(4) In this section—

"councillor" means—

(a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and

(b) in relation to Scotland, a member of a regional, islands or district council;

"councillor's allowance" means an allowance under or by virtue of—

(a) section 173 or 177 of the Local Government Act 1972, or a scheme made by virtue of section 18 of the Local Government and Housing Act 1989, other than such an allowance as is mentioned in section 173(4) of that Act of 1972; or

(b) section 49 of the Local Government (Scotland) Act 1973 or a scheme made by virtue of section 18 of the Local Government and Housing Act 1989;

and where any such allowance is paid otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the allowance;

"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;

"permitted earnings limit" means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983;

"pre-commencement period" means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into force of paragraph 2 of Schedule 8 to the Social Security Act 1989 which made provision corresponding to the provision made by this section).

(5) Any reference in this section to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any of the bodies referred to in—

(a) section 177(1) of the Local Government Act 1972; or

(b) section 49(1) or (1A) of the Local Government (Scotland) Act 1973,

of which he is a member by virtue of his being a councillor.