



Statutory Document No. 111/97

THE SOCIAL SECURITY ACT 1982

THE SOCIAL SECURITY LEGISLATION (APPLICATION)
(NO. 3) ORDER 1997

Approved by Fynwald 15th April 1997

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 1982(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Social Security Legislation (Application) (No. 3) Order 1997 and shall, subject to section 1(6) of the Social Security Act 1982, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall come into force or be deemed to have come into force, as the case may be, on the same day as that provision came into force in Great Britain.

Interpretation

2. (1) In this Order "the applied legislation" means -

- (a) regulations 1 to 4 of the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996(b);
- (b) regulations 1 to 12 and 22 of the Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations 1996(c);
- (c) The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996(d).

(a) 1982 c. 9; (b) S.I. 1996/1803; (c) S.I. 1996/2450; (d) S.I. 1996/3207.

Price: £1.05

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 1982 or section 1 of the Pension Schemes Act 1995(a), shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedules to this Order, shall apply to the Island as part of the law of the Island.

(a) 1995 c.11.

SCHEDULE 1

This Schedule sets out the text of regulations 1 to 4 of the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/1803) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1996 No. 1803

SOCIAL SECURITY

The Child Benefit, Child Support and Social Security
(Miscellaneous Amendments) Regulations 1996

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996 and shall come into force -

(a) for the purposes of regulation 1, on 1st April 1997;

(b) for the purposes of regulations 2 to 4, on 7th April 1997.

(2) - (3) *Omitted.*

(4) In these Regulations -

"the Adjudication Regulations" means the Social Security (Adjudication) Regulations 1995(a);

"the Child Benefit Regulations" means the Child Benefit (General) Regulations 1976(b).

(a) S.I. 1995/1801; (b) S.I. 1976/965.

Amendment of regulation 59 of the Adjudication Regulations

2. In regulation 59(1)(d) of the Adjudication Regulations (review of decisions involving payment or increase of child benefit), for the word "12" there shall be substituted the word "6".

Amendment of regulation 9 of the Child Benefit Regulations

3. (1) In regulation 9 of the Child Benefit Regulations (persons exempt from tax) -

(a) in paragraph (1), after the words "his spouse" wherever those words occur, there shall be inserted the words "or partner";

(b) after paragraph (1), there shall be inserted the following paragraph -

"(1A) For the purposes of paragraph (1), "partner" means any person who is living with another person as his spouse."

(2) Paragraph (1) shall not apply in the case of any person who was entitled to child benefit on 6th April 1997 and to whom regulation 9(1) of the Child Benefit Regulations applies on the date these Regulations come into force, for so long as his entitlement to child benefit continues.

Insertion of regulation 9A into the Child Benefit Regulations

4. (1) After regulation 9 of the Child Benefit Regulations, there shall be inserted the following regulation -

"Child living with another person as his spouse

9A. (1) Except in the circumstances specified in paragraph (2), benefit shall not be payable to any person in respect of a child for any week in which that child is living with another person as his spouse (referred to in this regulation as "the partner") and that child -

(a) is under the age of 18 and not receiving full-time education; or

(b) is under the age of 19 and receiving full-time education.

(2) The specified circumstances are that -

(a) the person to whom benefit is payable is not the partner of that child; and

(b) the partner of that child is receiving full-time education."

(2) Paragraph (1) shall not apply in the case of any person who was entitled to child benefit on 6th April 1997 for so long as that entitlement continues.

SCHEDULE 2

This Schedule sets out the text of regulations 1 to 12 and 22 of the Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations 1996 (S.I. 1996/2450) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1996 No. 2450

SOCIAL SECURITY

The Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations 1996

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations 1996 and shall come into force on *1st May 1997*.

(2) In these Regulations "the Adjudication Regulations " means the Social Security (Adjudication) Regulations 1995(a);

Amendment of regulation 1 of the Adjudication Regulations

2. In paragraph (2) of regulation 1 of the Adjudication Regulations (citation, commencement and interpretation) after the definition of "claimant" there shall be inserted the following definition -

"clerk to the tribunal " means, as the case may be, a clerk to a social security appeal tribunal or a clerk to a disability appeal tribunal appointed in accordance with section 41 or 43 of and paragraph 3 of Schedule 2 to, the Administration Act or a person acting as the clerk to a medical board or a special medical board constituted in accordance with these Regulations."

(a) S.I. 1995/1801.

Amendment of regulation 2 of the Adjudication Regulations

3. After sub-paragraph (a) of paragraph (1) of regulation 2 of the Adjudication Regulations (procedure in connection with determinations; and right to representation) there shall be inserted the following sub-paragraphs -

"(aa) the chairman of a tribunal or board may give directions requiring any party to the proceedings to comply with any provision of these Regulations and may further at any stage of the proceedings either of his own motion or on a written application made to the clerk to the tribunal by any party to the proceedings give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to provide such further particulars or to produce such documents as may reasonably be required;

(ab) where under these Regulations the clerk to the tribunal is authorised to take steps in relation to the procedure of the tribunal or board, he may give directions requiring any party to the proceedings to comply with any provision of these Regulations; "

Amendment of regulation 3 of the Adjudication Regulations

4. (1) Regulation 3 of the Adjudication Regulations (manner of making applications, appeals or references; and time limits) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) after the words "in writing" there shall be inserted the words "and, in the case of an appeal, shall be on a form approved by the *Department*".

(3) For paragraph (3) there shall be substituted the following paragraph -

" (3) The time specified by this regulation and Schedule 2 for the making of any application, appeal or reference (except an application to the chairman of an appeal tribunal, a medical board or a disability appeal tribunal for leave to appeal to a Commissioner) may be extended, even though the time so specified may already have expired -

(a) in the case of an application or reference, for special reasons;

(b) in the case of an appeal, provided the conditions set out in paragraphs (3A) to (3E) are satisfied;

and any application for an extension of time under this paragraph shall be made to and determined by the person or body to whom the application, appeal or reference is sought to be made or, in the case of a tribunal or board, its chairman. "

(4) For paragraph (5) there shall be substituted the following paragraph -

"(5) Any application, appeal or reference under these Regulations shall contain the following particulars -

(a) in the case of an appeal, the date of the notification of the decision against which the appeal is made, the claim or question under the Acts to which the decision relates, and a summary of the arguments relied on by the person making the appeal to support his contention that the decision was wrong;

(b) in the case of an application under paragraph (3) for an extension of time in which to appeal, in relation to the appeal which it is proposed to bring, the particulars required under sub-paragraph (a) together with particulars of the special reasons on which the application is based;

(c) in the case of any other application or any reference, the grounds on which it is made or given."

(5) At the end of paragraph (5) there shall be inserted the following paragraph -

"(5A) Where an appeal is not made on the form approved for the time being, but is made in writing and contains all the particulars required under paragraph (5), the chairman of the tribunal may treat that appeal as duly made."

(6) For paragraph (6) there shall be substituted the following paragraphs -

"(6) Where it appears -

(a) to the chairman of a tribunal or board or the clerk to the tribunal that an application, appeal or reference which is made to him or to the tribunal or board; or

(b) to the *Department* or an adjudication officer that an application or reference which is made to him;

does not contain the particulars required under paragraph (5), he may direct the person making the application, appeal or reference to provide such particulars.

(6A) Where further particulars are required under paragraph (6), the chairman of the tribunal or board, the clerk to the tribunal, the *Department* or the adjudication officer, as the case may be, may extend the time specified by this regulation and Schedule 2 for making the application, appeal or reference by a period of not more than 14 days.

(6B) Where further particulars are required under paragraph (6), in the case of an appeal they shall be sent or delivered to the clerk to the tribunal within such period as the chairman or the clerk to the tribunal may direct.

(6C) The date of an appeal shall be the date on which all the particulars required under paragraph (5) are received by the clerk to the tribunal."

Amendment of regulation 4 of the Adjudication Regulations

5. (1) Regulation 4 of the Adjudication Regulations (oral hearings and inquiries) shall be amended in accordance with the following provisions of this regulation.

(2) *Omitted.*

(3) After paragraph (2) there shall be inserted the following paragraphs -

"(2A) The chairman of an appeal tribunal, a medical board or a disability appeal tribunal may give notice for the determination forthwith, in accordance with the provisions of these Regulations, of an appeal notwithstanding that a party to the proceedings has failed to indicate his availability for a hearing or to provide all the information which may have been requested, if the chairman is satisfied that such party -

(a) has failed to comply with a direction regarding his availability or requiring information under regulation 2(1)(aa) or (ab); and

(b) has not given any explanation for his failure to comply with such a direction;

provided that the chairman is satisfied that the tribunal has sufficient particulars in order for the appeal to be determined.

(2B) The chairman of an appeal tribunal, a medical board or a disability appeal tribunal may give notice for the determination forthwith, in accordance with the provisions of these Regulations, of an appeal which he believes has no reasonable prospect of success.

(2C) *Omitted.*

(4) In paragraph (3)-

- (a) for the words "shall fail to appear" there shall be substituted the words "fails to appear";
- (b) after the words "including any explanation offered for the absence" there shall be inserted the words "and where applicable the circumstances set out in sub-paragraphs (a) or (b) of paragraph (2A)".
- (c) for the words "proceed with the case of inquiry" there shall be substituted the words "proceed with the hearing or inquiry";

(5) *Omitted.*

Amendment of regulation 5 of the Adjudication Regulations

6. (1) Regulation 5 of the Adjudication Regulations (postponement and adjournment) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) there shall be substituted the following paragraph -

"(1) Where a person to whom notice of an oral hearing or inquiry has been given wishes to request a postponement of that hearing or inquiry -

- (a) in the case of an oral hearing by an adjudicating authority, he shall do so in writing to the clerk to the tribunal stating his reasons for the request, and the clerk to the tribunal may grant or refuse the request as he thinks fit or may pass the request to the chairman, who may grant or refuse the request as he thinks fit;
- (b) in the case of an inquiry, he shall do so in writing to the person appointed to hold the inquiry stating his reasons for the request, and the person appointed may grant or refuse the request as he thinks fit."

(3) In paragraph (2), there shall be inserted after the words "A chairman" the words "or the clerk to the tribunal".

Amendment of regulation 6 of the Adjudication Regulations

7. (1) Regulation 6 of the Adjudication Regulations (withdrawal of applications, appeals and references) shall be amended in accordance with the following provisions of this regulation.

(2) For sub-paragraph (a) of paragraph (2) there shall be substituted the following sub-paragraph -

"(a) before the hearing begins, provided that, in the case of a tribunal or board, the clerk to the tribunal has not received any notice under paragraph (2A), by giving written notice of intention to withdraw to the adjudicating authority to whom the appeal was made and with the consent in writing of any other party to the proceedings other than -

(i) in a case which originated in a decision of an adjudication officer, an adjudication officer;

(ii) in any other case, the *Department*; or".

(3) After paragraph (2) there shall be inserted the following paragraph -

"(2A) An appeal to a tribunal or board shall not be withdrawn under sub-paragraph (a) of paragraph (2) if the clerk to the tribunal has previously received notice opposing a withdrawal of such appeal from -

(a) in a case which originated in a decision of an adjudication officer, an adjudication officer; or

(b) in any other case, the *Department*."

Amendment of regulation 7 of the Adjudication Regulations

8. (1) Regulation 7 of the Adjudication Regulations (striking-out of proceedings for want of prosecution) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) -

(a) there shall be inserted after the words "a direction given by the chairman" the words "or the clerk to the tribunal";

(b) there shall be substituted for the words "regulation 2(1)(a)" the words "regulation 2(1)(aa) or (ab)".

(3) After paragraph (1) there shall be inserted the following paragraphs -

"(1A) Where the chairman decides not to strike out an appeal under paragraph (1) he shall consider whether the appeal should be determined forthwith in accordance with these Regulations.

(1B) Where the chairman decides that an appeal should not be determined forthwith under paragraph (1A) he shall consider whether he should make further directions with a view to expediting the hearing of the appeal."

(4) After paragraph (2) there shall be inserted the following paragraph -

"(2A) Paragraph (2) shall not apply where the address of the person against whom it is proposed that an order under paragraph (1) should be made is unknown to the chairman or to the clerk to the tribunal and cannot be ascertained by reasonable enquiry."

(5) In paragraph (3)-

(a) there shall be substituted for the words "12 months" the words "3 months";

(b) after the words "paragraph (1)" where they appear for the second time there shall be added the words ", if he is satisfied that the party concerned did not receive a notice under paragraph (2) and that the conditions in paragraph (2A) were not met".

Amendment of regulation 10 of the Adjudication Regulations

9. After paragraph (1) of regulation 10 of the Adjudication Regulations (setting aside decisions on certain grounds) there shall be inserted the following paragraph -

"(1A) In determining whether it is just to set aside a decision on the ground set out in paragraph (1)(b), the adjudicating authority shall determine whether the party making the application gave notice that he wished an oral hearing to be held, and if that party did not give such notice the adjudicating authority shall not set the decision aside unless it is satisfied that the interests of justice manifestly so require."

Amendment of regulation 22 of the Adjudication Regulations

10. For paragraph (1) of regulation 22 of the Adjudication Regulations (oral hearing of appeals and references) there shall be substituted the following paragraphs -

"(1) Where an appeal or reference is made to an appeal tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that appeal or reference to be held.

(1A) A notification under paragraph (1) shall be in writing and shall be made within 10 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman of the tribunal may direct.

(1B) Where the clerk to the tribunal receives notification in accordance with paragraph (1A) the appeal tribunal shall hold an oral hearing.

(1C) The chairman of an appeal tribunal may of his own motion require an oral hearing to be held if he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision."

Amendment of regulation 23 of the Adjudication Regulations

11. (1) Regulation 23 of the Adjudication Regulations (decisions of appeal tribunals) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (2) there shall be substituted the following paragraph -

"(2) Every decision of an appeal tribunal shall be recorded in summary by the chairman in such written form of decision notice as shall have been approved by the *Department*, and such decision notice shall be signed by the chairman."

(3) For paragraph (3) there shall be substituted the following paragraphs -

"(3) As soon as may be practicable after a case has been decided by an appeal tribunal, a copy of the decision notice made in accordance with paragraph (2) shall be sent or given to every party to the proceedings who shall also be informed of -

(a) his right under paragraph (3C); and

(b) the conditions governing appeals to a Commissioner.

(3A) A statement of the reasons for the tribunal's decision and of its findings on questions of fact material thereto may be given -

(a) orally at the hearing; or

(b) in writing at such later date as the chairman may determine.

(3B) Where the statement referred to in paragraph (3A) is given orally, it shall be recorded in such medium as the chairman may determine.

(3C) A copy of the statement referred to in paragraph (3A) shall be supplied to the parties to the proceedings if requested by any of them within 21 days after the decision notice has been sent or given, and if the statement is one to which sub-paragraph (a) of that paragraph applies, that copy shall be supplied in such medium as the chairman may direct.

(3D) If a decision is not unanimous, the statement referred to in paragraph (3A) shall record that one of the members dissented and the reasons given by him for dissenting." .

(4) In paragraph (4) the words "(which may take the form of a transcript or tape)" shall be omitted.

Amendment of regulation 29 of the Adjudication Regulations

12. (1) Regulation 29 of the Adjudication Regulations (procedure for disability appeal tribunals) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) there shall be substituted the following paragraphs -

"(1) Where an appeal is made to a disability appeal tribunal, the clerk to the tribunal shall direct every party to the proceedings to notify him if that party wishes an oral hearing of that appeal to be held.

(1A) A notification under paragraph (1) shall be in writing and shall be made within 10 days of receipt of the direction from the clerk to the tribunal or within such other period as the clerk to the tribunal or the chairman of the tribunal may direct.

(1B) Where the clerk to the tribunal receives notification in accordance with paragraph (1A) the disability appeal tribunal shall hold an oral hearing.

(1C) The chairman of a disability appeal tribunal may of his own motion require an oral hearing to be held if he is satisfied that such a hearing is necessary to enable the tribunal to reach a decision." .

(3) For paragraph (5) there shall be substituted the following paragraph -

"(5) Every decision of a disability appeal tribunal shall be recorded in summary by the chairman in such written form of decision notice as shall have been approved by the *Department*, and such decision notice shall be signed by the chairman."

(4) For paragraph (6) there shall be substituted the following paragraphs -

"(6) As soon as may be practicable after a case has been decided by a disability appeal tribunal, a copy of the decision notice made in accordance with paragraph (5) shall be sent or given to every party to the proceedings who shall also be informed of -

(a) his right under paragraph (6C); and

(b) the conditions governing appeals to a Commissioner.

(6A) A statement of the reasons for the tribunal's decision and of its findings on questions of fact material thereto may be given -

(a) orally at the hearing; or

(b) in writing at such later date as the chairman may determine.

(6B) Where the statement referred to in paragraph (6A) is given orally, it shall be recorded in such medium as the chairman may determine.

(6C) A copy of the statement referred to in paragraph (6A) shall be supplied to the parties to the proceedings if requested by any of them within 21 days after the decision notice has been sent or given, and if the statement is one to which sub-paragraph (a) of that paragraph applies, that copy shall be supplied in such medium as the chairman may direct.

(6D) If a decision is not unanimous, the statement referred to in paragraph (6A) shall record that one of the members dissented and the reasons given by him for dissenting."

(5) In paragraph (7) the words "(which may take the form of a transcript or a tape)" shall be omitted.

Saving provision

22. In a case where an appeal, application or reference was made before the date on which these Regulations come into force, regulations 3, 7(3), 22 and 29(1) of the Adjudication Regulations shall apply as if these Regulations had not been made.

SCHEDULE 3

This Schedule sets out the text of the Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1996 No. 3207

SOCIAL SECURITY

The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 and shall come into force on 6th January 1997.

(2) In these Regulations -

"the Incapacity General Regulations" means the Social Security (Incapacity for Work) (General) Regulations 1995(a);

"the Incapacity Transitional Regulations" means the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(b);

"the Overlapping Benefits Regulations" means the Social Security (Overlapping Benefits) Regulations 1979(c).

Amendment of the Incapacity General Regulations

2. (1) The Incapacity General Regulations shall be amended in accordance with the following paragraphs of this regulation.

(a) S.I. 1995/311; (b) S.I. 1995/310; (c) S.I. 1979/597.

(2) In regulation 2(1) (interpretation) -

(a) in the definition of "doctor" after the word "practitioner" there shall be inserted -

", or in the case of a medical practitioner practising outside *the Isle of Man or* the United Kingdom of whom the *Department* may request a medical opinion, a person registered or recognised as such in the country in which he pursues his medical practice";

(b) after the definition of "doctor" there shall be inserted -

"medical evidence" means -

(a) evidence from a doctor approved by the *Department*, and

(b) evidence (if any) from any other doctor, or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;";

(c) after the definition of "*own occupation test*" there shall be inserted -

"relative" means a close relative, a spouse or, in the case of an unmarried couple, the other member of that couple, grandparent, grandchild, uncle, aunt, nephew or niece;";

(d) *Omitted*;

(e) the definition of "voluntary organisation" shall be omitted;

(f) for the definition of "volunteer" there shall be substituted -

"volunteer" means a person who is engaged in voluntary work, otherwise than for a close relative, where the only payment received by him or due to be paid to him by virtue of being so engaged is in respect of any expenses reasonably incurred by him in connection with that work;".

(3) In regulation 10(2) (certain persons with a severe condition to be treated as incapable of work), in sub-paragraph (e) -

(a) for the words "that a doctor approved by the *Department* has certified that he is suffering from any of the following conditions -" there shall be substituted the words "that he is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of them -";

(b) in head (ii), for the words "and muscle" there shall be substituted "or muscle"; and

(c) for head (viii) there shall be substituted -

"(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.".

(4) *Omitted.*

(5) In regulation 16 (person who works to be treated as capable of work) -

(a) in paragraph (2) there shall be omitted the word "close";

(b) in sub-paragraph (a) of paragraph (3) -

(i) the words "in any spell of incapacity" shall be omitted, and

(ii) after the word "work" there shall be inserted "in any period"; and

(c) in sub-paragraph (b) of paragraph (3), for the words "any spell of incapacity" there shall be substituted the words "any period in which he is incapable of work".

(6) In regulation 18(1) (disqualification for misconduct etc.), in sub-paragraph (b), for the words from "which could significantly" to "therefrom or" there shall be substituted "recommended by a doctor with whom, or a hospital or similar institution with which, he is undergoing medical treatment and,".

(7) In regulation 25 (assessment under the all work test) -

(a) in paragraph (2), at the end there shall be added "or, as the case may be, any aid or appliance which he normally wears or uses"; and

(b) after paragraph (2) there shall be inserted -

"(3) In determining the extent of a person's incapacity to perform any activity listed in Part I or Part II, it shall be a condition that the person's incapacity arises -

(a) in respect of a disability listed in Part I, from a specific bodily disease or disablement;
or

(b) in respect of a disability listed in Part II, from some specific mental illness or disablement."

(8) In regulation 26(1) (calculation of scores) -

(a) in sub-paragraph (a), for the words "a score", where they first appear, there shall be substituted "an aggregate score";

(b) in sub-paragraph (b) -

(i) for the words "a score" there shall be substituted the words "an aggregate score",
and

(ii) for the words "any descriptor" there shall be substituted the words "the descriptors".

(9) For regulation 27 (exceptional circumstances) there shall be substituted -

"27. (1) A person who does not satisfy the all work test shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life threatening disease in relation to which -

- (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
- (ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the all work test by a doctor approved by the *Department*;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the all work test."

(10) In regulation 28 (conditions for treating the all work test as satisfied until assessment), in paragraph (2)(b), after the word "advantage" there shall be inserted "which is dependent on him being incapable of work".

(11) In the Schedule (disabilities which may make a person incapable of work) -

(a) in Part I (physical disabilities), in column (1) (activity) -

- (i) in item 8, after the word "carrying" there shall be inserted "by the use of upper body and arms (excluding all other activities specified in Part I of this Schedule)",
- (ii) in item 13, after the word "Continence" there shall be inserted "(other than enuresis (bed wetting)).",
- (iii) in item 14, for the words "other than for normal periods of sleep" there shall be substituted "without having epileptic or similar seizures during waking moments";

(b) in Part I (physical disabilities), in column (2) (descriptor) -

- (i) in item 3(b) to (e), after the word "chair" there shall be added "because the degree of discomfort makes it impossible to continue sitting",
- (ii) in item 6(b) and (c) for the words "bend or kneel" there shall be substituted the words "either, bend or kneel, or bend and kneel",
- (iii) in item 7 -
 - (aa) for head (b) there shall be substituted "Cannot turn a sink tap or the control knobs on a cooker with either hand",
 - (ab) for head (f) there shall be substituted "Cannot turn a sink tap or the control knobs on a cooker with one hand, but can with the other", and
 - (ac) in head (g) after the word "hand" there shall be added ", but can with the other",
- (iv) in item 8, in heads (e) and (f), after the word "hand" there shall be added ", but can with the other",

(v) in item 9 -

- (aa) in head (a), after the word "arm" there shall be inserted "as if",
- (ab) in heads (b) and (d) to (f), after the word "head " there shall be inserted "as if",
- (ac) in head (c), after the word "back" there shall be inserted "as if", and
- (ad) in heads (e) and (f), at the end their shall be added ", but can with the other",

(vi) in item 12 -

- (aa) in head (d), after the word "room" there shall be inserted "at a distance of at least 5 metres", and
- (ab) in head (e), after the word "road" there shall be inserted "at a distance of at least 15 metres";

(c) in Part II (mental disabilities), in column (2) (descriptor), in item 15 -

- (i) in head (c), after the word "radio" there shall be inserted "or television", and
- (ii) in head (g), for the words "mishaps or" there shall be substituted "potentially dangerous".

Amendment of the Incapacity Transitional Regulations

3. (1) The Incapacity Transitional Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 11 (transitional awards of short-term incapacity benefit) -

- (a) in paragraph (4), for the word "Where" there shall be substituted "Subject to paragraph (5), where"; and
- (b) after paragraph (4) there shall be inserted -

"(5) Where paragraph (4) applies to a person whose transitional award of short-term incapacity benefit was in respect of a personal injury of a kind mentioned in section 94(1) of the 1992 Act, he shall be entitled to the long-term incapacity benefit only if his incapacity for work continues to result from that personal injury."

(3) In regulation 17(3) (transitional awards of long-term incapacity benefit) after the word "age", where it appears in the second place, there shall be inserted "or until the first day on which he is entitled to retirement pension, whichever date is the earlier".

(4) In regulation 18 (rate of long-term incapacity benefit in transitional cases) -

- (a) in paragraph (1)(c), for the words "by virtue of section 34" there shall be substituted "pursuant to subsection (3) of section 34";
- (b) in paragraph (4) there shall be omitted the words from "and he shall" to the end; and
- (c) in paragraph (7), after the word "age", where it appears for the third time, there shall be inserted the words "or until the first day on which he is entitled to retirement pension, whichever date is the earlier,".

(5) In regulation 31 (application of the new tests of incapacity for work) -

- (a) in paragraph (1), for the words from "and on" to "to him," there shall be substituted the words "and he continues to be incapable of work on or after the appointed day, the all work test shall apply to him, but";

(b) in paragraph (5) -

- (i) in sub-paragraph (h), for the words " a doctor approved by the *Department* has certified that person is suffering from any of the following conditions -" there shall be substituted the words " a person suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of them -"; and

(ii) for head (viii) of sub-paragraph (h) there shall be substituted -

"(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment."; and

(c) after paragraph (5) there shall be inserted -

"(6) In sub-paragraph (h) of paragraph (5), "medical evidence" means -

(a) evidence from a doctor approved by the *Department*; and

(b) evidence (if any) from any other doctor, or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances."

Amendment of the Overlapping Benefits Regulations

4. In regulation 4 of the Overlapping Benefits Regulations (adjustment of personal benefit under Parts II and III of the Contributions and Benefits Act where other personal benefit under those Parts or graduated retirement benefit is payable), after paragraph (5) there shall be inserted -

"(6) For the purposes of this regulation -

"additional pension" means a pension payable with a personal benefit under Part II of the Contributions and Benefits Act or an additional rate; and

"additional rate" means an additional amount equal to the rate paid or payable as an additional pension with invalidity benefit immediately before 13th April 1995 which is payable after that date pursuant to regulation 18 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995. "

Made 17th March 1997

Mrs C M Christian BSc M.L.C.
Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Social Security Act 1982 enables the Department by Order to apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the Order, any legislation to which the Act applies.
2. The Act applies, inter alia, to the Social Security Acts 1975 - 1996 (of Parliament) and any statutory instrument made or having effect under those Acts.
3. This Order applies to the Island the statutory instruments referred to in Article 2(1) of the Order the provisions of which, as applied, are summarised in the following paragraphs. The applied legislation comes into force or is deemed to have come into force, as the case may be, on the same day as the corresponding provisions come or came into force in Great Britain. Where necessary the provisions have been applied in the Island administratively pending their application by Order.

4. Regulations 1 to 4 of the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/1803)

These Regulations amend the Social Security (Adjudication) Regulations 1995 (S.I. 1995/1801) by reducing the time limit for submitting applications for review of decisions relating to child benefit.

5. Regulations 1 to 12 of the Social Security (Adjudication) and Child Support Amendment (No. 2) Regulations 1996 (S.I. 1996/2450)

These Regulations amend the Social Security (Adjudication) Regulations 1995 to make certain changes to the procedure of social security appeal tribunals, disability appeal tribunals or medical boards.

The Adjudication Regulations are amended to -

- insert a new definition of "clerk to the tribunal" (regulation 2);
- specify the circumstances in which the chairman or a tribunal or board or the clerk to the tribunal may give directions as to procedure (regulation 3);
- include new requirements for the information to be provided in connection with an appeal (regulation 4);
- provide that in certain circumstances a tribunal chairman may direct that an appeal be determined forthwith (regulation 5);

- allow the clerk to the tribunal to deal with requests for hearings to be postponed and to postpone hearings of his own motion (regulation 6);
- allow a person who has made an appeal to withdraw it before a hearing without consent in certain circumstances (regulation 7);
- amend the circumstances in which a tribunal chairman may strike out an appeal for want of prosecution, the procedure for striking out, and the circumstances in which an appeal which has been struck out may be reinstated (regulation 8);
- amend the provisions on setting aside tribunal decisions to reflect the new provisions on oral hearings (regulation 9);
- provide that, unless the chairman of a tribunal or board orders an oral hearing, an oral hearing of an appeal or reference shall be held only on the request of a party to the proceedings, and specify how such a request is to be made (regulations 10 and 12(2));
- amend the provisions on the form and promulgation of tribunal decisions (regulations 11(2) and (3) and 12(3) and (4)).

Regulation 22 makes a saving provision in respect of certain provisions of the Social Security (Adjudication) Regulations 1995.

6. The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207)

These Regulations further amend the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I. 1995/311) ("the Incapacity General Regulations"), the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (S.I. 1995/310) ("the Incapacity Transitional Regulations") and the Social Security (Overlapping Benefits) Regulations 1979 (S.I. 1979/597) ("the Overlapping Benefits Regulations").

The Incapacity General Regulations are amended to make certain clarifications and to correct minor errors (regulation 2(2), (3), (4), (5), (6), (7), (8), (10) and (11)); and to make provision consistent with adjudication in respect of the exceptional circumstances for which a person who fails the all work test is to be treated as incapable of work (regulation 2(9)).

The Incapacity Transitional Regulations are amended to make certain clarifications and to correct minor errors (regulation 3(2) to (5)).

The Overlapping Benefits Regulations are amended to make it clear that additional rate under the Incapacity Transitional Regulations is to be treated in the same way as additional pension (regulation 4).