



# Social Security (Incapacity for Work) Act 1994

## 1994 CHAPTER 18

### *Incapacity benefit*

#### **4 Power to provide for the transition to incapacity benefit**

- (1) The Secretary of State may by regulations make such provision as appears to him 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 section shall be construed as restricting the generality of that power.

- (2) In this section—

“commencement” means the commencement of sections 1 to 3 above and the consequent repeal of the provisions of the Social Security Contributions and Benefits Act 1992 relating to sickness benefit and invalidity benefit; and

“prescribed” means prescribed by regulations under this section.

- (3) Regulations under this section 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 section such awards are referred to as “transitional awards” of incapacity benefit.

- (4) The reference in subsection (3) above 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 Social Security Contributions and Benefits Act 1992; and regulations under this section may provide that any such disqualification shall have such corresponding effect as may be prescribed in relation to the transitional award.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Regulations under this section 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 Social Security Contributions and Benefits Act 1992 of the question whether that person is incapable of work; and
  - (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 section 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 section as “transitional cases”.

- (7) Regulations under this section 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 Social Security Contributions and Benefits Act 1992 (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 section 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 150 of the Social Security Administration Act 1992 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 subsection (8) above 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 section 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 subsection—

“dependency allowance” means an allowance of the kind provided for in Part IV of the Social Security Contributions and Benefits Act 1992, and

“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) Section 175(2) to (4) of the Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

- (12) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

- (13) A statutory instrument—

- (a) which contains (whether alone or with other provisions) any regulations made under this section, and
- (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.