
STATUTORY INSTRUMENTS

1996 No. 3207

SOCIAL SECURITY

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

Made - - - - 19th December 1996

Coming into force - - 6th January 1997

Whereas a draft of this instrument was laid before Parliament in accordance with sections 4(12), 6(3) and 7(5) of the Social Security (Incapacity for Work) Act 1994⁽¹⁾ and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 171A, 171C, 171D, 171E, 171G(2) and 175(2) to (4) of the Social Security Contributions and Benefits Act 1992⁽²⁾, sections 73 and 191 of the Social Security Administration Act 1992⁽³⁾ and sections 4, 7 and 12 of the Social Security (Incapacity for Work) Act 1994 and of all other powers enabling him in that behalf, and after agreement by the Social Security Advisory Committee that the proposals to make these Regulations need not be referred to it⁽⁴⁾, hereby makes the following Regulations:

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⁽⁵⁾;

“the Incapacity Transitional Regulations” means the Social Security (Incapacity Benefit) (Transitional) Regulations 1995⁽⁶⁾ and

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- (1) 1994 c. 18.
(2) 1992 c. 4. Sections 171A and 171C were inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 5; and sections 171D, 171E and 171G were inserted by section 6(1) of that Act. Section 171G(2) is cited because of the meaning assigned to the word “prescribed”.
(3) 1992 c. 5. Section 73 was amended by the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 49. Section 191 is cited because of the meaning assigned to the word “prescribe”.
(4) See the Social Security Administration Act 1992 (c. 5), section 173(1)(b).
(5) S.I. 1995/311, to which there are amendments not relevant to this regulation.
(6) S.I. 1995/310, to which there are amendments not relevant to this regulation.

“the Overlapping Benefits Regulations” means the Social Security (Overlapping Benefits) Regulations 1979(7).

Amendment of the Incapacity General Regulations

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

(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 United Kingdom of whom the Secretary of State 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 Secretary of State, 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 “the President” 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) for the words “spell or incapacity” there shall be substituted the words “spell of incapacity”;
- (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)(8) (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 Secretary of State 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) In regulation 13 (person receiving certain regular treatment), in sub-paragraph (b) of paragraph (1), for the word “immuno-suppressive” there shall be substituted “immuno-suppressive”.

(7) S.I. 1979/597, to which there are amendments not relevant to this regulation.

(8) Regulation 10 was amended by S.I. 1995/987.

- (5) In regulation 16(9) (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)(10) (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 to 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 Secretary of State;
 - (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

(9) Regulation 16 was amended by S.I. 1995/987.

(10) Regulation 18 was amended by S.I. 1995/987.

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(11) (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 “Contenance” 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”;
 - (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”;
 - (ad) in heads (e) and (f), at the end there 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”;
 - (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”;
 - (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(**12**) (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(**13**) (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 Secretary of State has certified that person is suffering from any of the following conditions—” there shall be substituted the words “a person is 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 Secretary of State; 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.”

(12) Regulation 18 was amended by S.I. 1995/987 and 1996/599.

(13) Regulation 31 was amended by S.I. 1995/987.

Amendment of the Overlapping Benefits Regulations

4. In regulation 4 of the Overlapping Benefits Regulations⁽¹⁴⁾ (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⁽¹⁵⁾.”

Signed by authority of the Secretary of State for Social Security

19th December 1996

Alistair Burt
Minister of State,
Department of Social Security

⁽¹⁴⁾ Regulation 4 was amended by section 18(1) of the Social Security Act 1986 (c. 50), and further amended by S.I. 1984/1303, 1991/2742, 1992/3194, 1995/829 and 1996/1345.

⁽¹⁵⁾ S.I. 1995/310. Regulation 18 was amended by S.I. 1995/987 and 1996/599.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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).

These Regulations do not impose a charge on business.