

*Status: Point in time view as at 27/10/2008.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Cross Heading: Incapacity benefit is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### PART II

#### CONTRIBUTORY BENEFITS

#### *[<sup>F1</sup>Incapacity benefit]*

#### Textual Amendments

**F1** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 3(1); S.R. 1994/450, art. 2(d), Sch. Pt. IV

#### **[<sup>F2</sup>30A Incapacity benefit: entitlement.**

- (1) Subject to the following provisions of this section, a person who satisfies
- <sup>F3</sup>(a) either of the conditions mentioned in subsection (2) below; or
  - (b) if he satisfies neither of those conditions, each of the conditions mentioned in subsection (2A) below,]

is entitled to short-term incapacity benefit in respect of any day of incapacity for work [<sup>F4</sup>(“the relevant day”)] which forms part of a period of incapacity for work.

- (2) The conditions [<sup>F5</sup>mentioned in subsection (1)(a) above] are that—
- (a) he is under pensionable age on [<sup>F6</sup>the relevant day] and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or
  - (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—

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- (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or
- (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse [<sup>F7</sup>or deceased civil partner], but for any such deferment or election.

[ The conditions mentioned in subsection (1)(b) above are that—

- <sup>F8</sup>(2A)
- (a) he is aged 16 or over on the relevant day;
  - (b) he is under the age of 20 or, in prescribed cases, 25 on a day which forms part of the period of incapacity for work;
  - (c) he was incapable of work throughout a period of 196 consecutive days immediately preceding the relevant day, or an earlier day in the period of incapacity for work on which he was aged 16 or over;
  - (d) on the relevant day he satisfies the prescribed conditions as to residence in Northern Ireland, or as to presence there; and
  - (e) he is not, on that day, a person who is receiving full-time education.]

(3) A person is not entitled to short-term incapacity benefit [<sup>F9</sup>under subsection (1)(a) above] for the first 3 days of any period of incapacity for work.

(4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.

(5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.

[ Regulations may provide that persons who have previously been entitled to incapacity <sup>F10</sup>(6) benefit shall, in prescribed circumstances, be entitled to short-term incapacity benefit under subsection (1)(b) above notwithstanding that they do not satisfy the condition set out in paragraph (b) of subsection (2A) above.

(7) Regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time education for the purposes of paragraph (e) of subsection (2A) above.]]

#### Textual Amendments

- F2** S. 30A and preceding cross-heading inserted (13.4.1995) by S.I. 1994/1898 (N.I. 12), **art. 3(1)**; S.R. 1994/450, **art. 2(d)**, **Sch. Pt. IV**
- F3** Words in s. 30A(1) substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(1)(a)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F4** Words in s. 30A(1) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(1)(b)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F5** Words in s. 30A(2) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(2)(a)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F6** Words in s. 30A(2)(a) substituted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(2)(b)**; S.R. 2000/332, **art. 2(3)(c)(4)(5)**
- F7** Words in s. 30A(2)(b)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 68**; S.I. 2005/3255, **art. 2(1)**, **Sch.**

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- F8** S. 30A(2A) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(3)**; S.R. 2000/332, art. 2(3)(c)(4)(5)
- F9** Words in s. 30A(3) inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(4)**; S.R. 2000/332, art. 2(3)(c)(4)(5)
- F10** S. 30A(6)(7) added (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 61(5)**; S.R. 2000/332, art. 2(3)(c)(4)(5)

**Modifications etc. (not altering text)**

- C1** S. 30A modified (5.5.2003) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modifications for Her Majesty's Forces and Incapacity Benefit) Regulations 2003 (S.I. 2003/735), regs. 1, 2
- C2** S. 30A(4) modified (13.4.1995) by S.R. 1995/35, **reg. 4**

**[<sup>F11</sup>30B Incapacity benefit: rate.**

- (1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.
- (2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

- (3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase [<sup>F12</sup>(for married people [<sup>F13</sup>or civil partners]) under section 51A(2)] below or (for deferred retirement) under Schedule 5 to this Act;
  - (b) any increase (for dependants) under section <sup>F14</sup>... 83 or 85 below; and
  - (c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.
- (4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—
    - (a) is terminally ill; or
    - (b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

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- (5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.
- (6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.
- (7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.]

#### Textual Amendments

- F11** S. 30B inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 4(1)**; S.R. 1994/450, **art. 2(b)**, **Sch. Pt. II**
- F12** Words in s. 30B(3)(a) substituted (16.12.1995 subject to Sch. 2 of the amending S.I.) by S.I. 1995/3213 (N.I. 22), **arts. 1(3), 123**, **Sch. 2 Pt. II para. 18(3)**
- F13** Words in s. 30B(3)(a) inserted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(8)(d), **Sch. 24 para. 69**; S.I. 2005/3255, **art. 2(1)**, **Sch.**
- F14** Word in s. 30B(3) repealed (6.4.2003) by **Tax Credits Act 2002 (c. 21)**, s. 61, **Sch. 6**; S.I. 2003/962, **art. 2(3)(e)**, **Sch. 1** (with savings in S.R. 2003/212, **art. 2**)

#### Modifications etc. (not altering text)

- C3** S. 30B modified (13.4.1995) by S.R. 1995/35, **regs. 12, 13(1)(2), 14, 19, 20**
- C4** S. 30B(2)(4) modified (13.4.1995) by S.R. 1995/35, **reg. 4**
- C5** S. 30B(5) applied (1.5.1995) by 1994 c. 9, **s. 139(6)** (as inserted by 1995 c. 4, s. 141(3))

### [<sup>F15</sup>30C Incapacity benefit: days and periods of incapacity for work.

- (1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—
  - (a) a day of incapacity for work means a day on which a person is incapable of work;
  - (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
  - (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.
- (2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.
- (3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.

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(4) Regulations may provide—

- (a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be specified in the regulations; and
- (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.

[<sup>F16</sup>(5) Where a person claims the higher rate of short-term incapacity benefit, or long-term incapacity benefit, under section 30A above for a period commencing after he has ceased to be in qualifying remunerative work (within the meaning of Part 1 of the Tax Credits Act 2002) and—

- (a) the day following that on which he so ceased was a day of incapacity for work for him,
- (b) he has been entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit, under section 30A above within the period of two years ending with that day of incapacity for work, and
- (c) he satisfied the relevant tax credit conditions on the day before he so ceased, every day during that period on which he satisfied those conditions is to be treated for the purposes of the claim as a day of incapacity for work for him.

(5A) A person satisfies the relevant tax credit conditions on a day if—

- (a) he is entitled for the day to the disability element of working tax credit (on a claim made by him or by him jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act 2002) in his or their case is such that he is not so entitled, and
- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.]

(6) Where—

- (a) a person becomes engaged in training for work; and
- (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

(7) For the purposes of this section “week” means any period of 7 days.]

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#### Textual Amendments

- F15** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 5(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**
- F16** S. 30C(5)(5A) substituted for s. 30C(5) (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 37**; S.I. 2003/962, art. 2(3)(d)(iii)

#### Modifications etc. (not altering text)

- C6** S. 30C modified (31.3.2003) by The Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 (S.I. 2003/962), **art. 5(2)**
- C7** S. 30C modified (1.7.1998) by S.I. 1998/1506 (N.I. 10), **arts. 1(3)**, 73(8)(b)

### [<sup>F17</sup>30D Incapacity benefit: construction of references to days of entitlement.

- (1) The following provisions have effect in calculating for the purposes of—
- section 30A(4) above (length of entitlement to short-term incapacity benefit);
  - section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);
  - section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and
  - section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),
- the number of days for which a person has been entitled to short-term incapacity benefit.
- (2) There shall be included—
- the first 3 days of the period of incapacity for work; and
  - in the case of a woman, any days for which she was entitled to maternity allowance.
- (3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.
- (4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.]

#### Textual Amendments

- F17** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 5(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**

#### Modifications etc. (not altering text)

- C8** S. 30D modified (6.4.2003) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modifications for Her Majesty's Forces and Incapacity Benefit) Regulations 2003 (S.I. 2003/735), regs. 1, 3

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**[<sup>F19</sup>30DD] Incapacity benefit: reduction for pension payments [<sup>F18</sup> and PPF periodic payments].**

[<sup>F20</sup>(1) Where—

- (a) a person is entitled to incapacity benefit in respect of any period of a week or part of a week;
- (b) there is—
  - (i) a pension payment;
  - (ii) a PPF periodic payment; or
  - (iii) any combination of the payments specified in sub-paragraphs (i) and (ii) above,

payable to him in respect of that period (or a period which forms part of that period or includes that period or part of it); and

- (c) the amount of the payment or payments (or, as the case may be, the amount which in accordance with regulations is to be taken as payable to him by way of pension payments or PPF periodic payments in respect of that period), when taken together exceeds the threshold,

the amount of that benefit shall be reduced by an amount equal to 50 per cent. of that excess.]

(2) In subsection (1) above “the threshold” means—

- (a) if the period in question is a week, £85 or such greater amount as may be prescribed; or
- (b) if that period is not a week, such proportion of the amount mentioned in paragraph (a) as falls to be calculated in accordance with regulations on such basis as may be prescribed.

(3) Regulations may secure that a person of any prescribed description does not suffer any reduction under subsection (1) above in any amount of incapacity benefit to which he is entitled.

(4) Regulations may provide—

- (a) for sums of any specified description to be disregarded for the purposes of this section;
- (b) for sums of any specified description to be treated for those purposes as payable to persons as pension payments [<sup>F21</sup> or PPF periodic payments] (including, in particular sums in relation to which there is a deferred right of receipt);
- (c) for the aggregation of sums of any specified description which are payable as pension payments [<sup>F22</sup> or PPF periodic payments] (or treated as being so payable) in respect of the same or different periods;
- (d) for such sums or aggregate sums to be apportioned between or otherwise allocated to periods in respect of which persons are entitled to incapacity benefit.

(5) In this section “pension payment” means—

- (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an employment of his, under an occupational pension scheme or a public service pension scheme;
- (b) a payment of any specified description, being a payment made under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect; or

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(c) a payment of any other specified description;  
and “specified” means prescribed by or determined in accordance with regulations under this section.

(6) For the purposes of subsection (5) above

“occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each has the meaning given by section 1 of the <sup>M1</sup>Pension Schemes (Northern Ireland) Act 1993, except that

“personal pension scheme” includes [<sup>F23</sup>an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988, or a substituted contract within the meaning of section 622(3) of that Act, which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004].]

#### Textual Amendments

- F18** Words in s. 30DD heading inserted (14.2.2006) by The Pensions (2004 Act and 2005 Order) (PPF Payments and FAS Payments) (Consequential Provisions) Order (Northern Ireland) 2006 (S.R. 2006/37), art. 1(1), **Sch. para. 1(2)(a)**
- F19** S. 30DD inserted (3.11.2000 for specified purposes and 6.4.2001 otherwise) by S.I. 1999/3147 (N.I. 11), **art. 60**; S.R. 2000/332, **art. 2(3)(b)(4)(5)**
- F20** S. 30DD(1) substituted (14.2.2006) by The Pensions (2004 Act and 2005 Order) (PPF Payments and FAS Payments) (Consequential Provisions) Order (Northern Ireland) 2006 (S.R. 2006/37), art. 1(1), **Sch. para. 1(2)(b)**
- F21** Words in s. 30DD(4)(b) inserted (14.2.2006) by The Pensions (2004 Act and 2005 Order) (PPF Payments and FAS Payments) (Consequential Provisions) Order (Northern Ireland) 2006 (S.R. 2006/37), art. 1(1), **Sch. para. 1(2)(c)**
- F22** Words in s. 30DD(4)(c) inserted (14.2.2006) by The Pensions (2004 Act and 2005 Order) (PPF Payments and FAS Payments) (Consequential Provisions) Order (Northern Ireland) 2006 (S.R. 2006/37), art. 1(1), **Sch. para. 1(2)(c)**
- F23** Words in s. 30DD(6) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **5(2)**

#### Marginal Citations

- M1** 1993 c. 49.

#### [<sup>F24</sup>30E Incapacity benefit: reduction for councillor’s allowance.

- (1) Where the net amount of councillor’s allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
- (2) In this section “councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a member of a district council as may be prescribed for the purposes of this section; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments.
- (3) In subsection (1) above “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



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of any expenses incurred by him in that week in connection with his membership of the council or councils in question.]

.....  
**Textual Amendments**

**F24** Ss. 30C-30E inserted (21.11.1994 for the purpose of making regulations and 13.4.1995 otherwise) by S.I. 1994/1898 (N.I. 12), **art. 5(1)**; S.R. 1994/450, art. 2(b), **Sch. Pt. II**

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