
STATUTORY INSTRUMENTS

1994 No. 2946

The Social Security (Incapacity Benefit) Regulations 1994

PART II E+W+S

Entitlement to incapacity benefit: Supplementary provisions

Definition of “training for work” for the purposes of section 30C(6) of the Contributions and Benefits Act E+W+S

3. For the purposes of section 30C(6) of the Contributions and Benefits Act (which provides for days of training for work to be treated as days of incapacity for work) “training for work” also includes any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

Days not to be treated as days of incapacity for work E+W+S

4.—(1) For the purposes of incapacity benefit a day shall not be treated as a day of incapacity for work if it is—

- (a) a day in respect of which a person—
 - (i) has made no claim for incapacity benefit;
 - (ii) has made a claim for incapacity benefit but not within the prescribed time and good cause for the delay is not shown; or
 - (iii) has made a claim for incapacity benefit but not within the prescribed time and, whether or not the person has shown good cause for the delay, he is not entitled to benefit as a result of section 1(2) of the Administration Act (which provides for a 12 month limit on claims for incapacity benefit);

[^{F1}(iv) subject to regulation 2A, is not entitled to incapacity benefit because section 1(1A) of the Administration Act (requirement to state national insurance number) applies.]
 - [^{F2}(aa) a day which is, for the purposes of section 30A(2A)(c) of the Contributions and Benefits Act (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;]
 - (b) a day on which a person is disqualified for receiving incapacity benefit during a period of absence from Great Britain or imprisonment or detention in legal custody, if that disqualification is for more than 6 weeks; or
 - (c) subject to paragraph (2), a day on which a person attends a training course in respect of which he is paid a training allowance pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973 ^{M1} or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 ^{M2}.
- (2) Paragraph (1)(c) shall not apply—
- (a) for the purposes of any claim for incapacity benefit for a period commencing after a person ceased attending such a training course; or

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- (b) in calculating a period of continuous incapacity for work for the purposes of regulation 2 of the Social Security Benefit (Persons Abroad) Regulations 1975^{M3}.
- [^{F3}(c) where, such payment as is made, is for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990][^{F4}, or
- (d) to any part of such a payment made—
- (i) as a consequence of the person taking part in the scheme known as the Adult Learning Option (which is provided in pursuance of arrangements made by or on behalf of the Secretary of State under section 2 of the Employment and Training Act 1973), and
- (ii) which is not intended to meet the cost of living expenses to which paragraph (3) applies.]
- [^{F5}(3) This paragraph applies to living expenses which relate to—
- (a) food,
- (b) ordinary clothing or footwear,
- (c) household fuel,
- (d) rent for which housing benefit is payable,
- (e) any housing costs (to the extent that they are met under regulation 83(f) or 84(1)(g) of the Jobseeker's Allowance Regulations 1996 or regulation 17(1)(e) or 18(1)(f) of the Income Support (General) Regulations 1987 (housing costs)) of the claimant or, where the claimant is a member of the family, any other member of his family, or
- (f) any council tax or water charges for which that claimant or member is liable.]

Textual Amendments

- F1** Reg. 4(1)(iv) inserted (6.9.1999) by [The Social Security \(Incapacity Benefit and Jobseekers Allowance\) Amendment Regulations 1999 \(S.I. 1999/2226\)](#), regs. 1, **2**
- F2** Reg. 4(1)(aa) inserted (6.4.2001) by [The Social Security \(Incapacity Benefit\) Miscellaneous Amendments Regulations 2000 \(S.I. 2000/3120\)](#), regs. 1, **2(3)** (with reg. 6)
- F3** Reg. 4(2)(c) inserted (3.4.2000) by [The Social Security \(Approved Work\) Regulations 2000 \(S.I. 2000/678\)](#), regs. 1, **5**
- F4** Reg. 4(2)(d) and word inserted (1.9.2006) by [The Social Security \(Adult Learning Option\) Amendment Regulations 2006 \(S.I. 2006/2144\)](#), regs. 1, **3(2)**
- F5** Reg. 4(3) inserted (1.9.2006) by [The Social Security \(Adult Learning Option\) Amendment Regulations 2006 \(S.I. 2006/2144\)](#), regs. 1, **3(3)**

Marginal Citations

- M1** 1973 c.50.
- M2** 1990 c.35.
- M3** S.I. 1975/563. The relevant amending instrument is S.I. 1990/40.

[^{F6}Days to be treated as days of incapacity for work **E+W+S**

4A.—[

[^{F7}(1)] For the purposes of incapacity benefit for persons incapacitated in youth under section 30A(2A) of the Contributions and Benefits Act, any day in respect of which a person

is entitled to statutory sick pay immediately before the relevant day shall be treated as a day of incapacity for work.]

[^{F8}(2) Where—

- (a) any day was, as a result of official error, a day of incapacity for work in a period of incapacity for work for the purposes of the previous entitlement to incapacity benefit referred to in regulation 8D(2)(a) of the Social Security (Credits) Regulations 1975 (credits for the purposes of entitlement to incapacity benefit following official error); and
- (b) that official error derived from the failure to transpose correctly information relating to credits for incapacity for work or approved training in the tax years from 1993-94 to 2007-08 from the Department of Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' Computer System (NIRS2) or from related clerical procedures,

that day shall be treated as a day of incapacity for work for the purposes of the later claim referred to in paragraph (2)(d) of that regulation.

(3) In this regulation—

^{F9}
...

“credits for incapacity for work or approved training” means earnings credited pursuant to the Social Security (Credits) Regulations 1975 for incapacity for work or approved training;

“official error” means an error made by—

- (a) an officer of the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside the Department or Her Majesty's Revenue and Customs caused or to which no person outside the Department for Work and Pensions or Her Majesty's Revenue and Customs materially contributed, or
- (b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of [^{F10}the Upper Tribunal] or the court;

“service provider” means a person providing services to the Secretary of State for Work and Pensions or to Her Majesty's Revenue and Customs.]

Textual Amendments

- F6** Reg. 4A inserted (6.4.2001) by [The Social Security \(Incapacity Benefit\) Miscellaneous Amendments Regulations 2000 \(S.I. 2000/3120\)](#), regs. 1, **2(4)** (with reg. 6)
- F7** Reg. 4A(1): reg. 4A renumbered as reg. 4A(1) (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **6(2)**
- F8** Reg. 4A(2)(3) inserted (1.10.2007) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2007 \(S.I. 2007/2618\)](#), regs. 1(1), **6(3)**
- F9** Words in reg. 4A(3) omitted (3.11.2008) by virtue of [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 65(a)**
- F10** Words in reg. 4A(3) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 65(b)**

Night workers **E+W+S**

5.—(1) For the purposes of incapacity benefit, where a person works for a continuous period which extends over midnight into the following day, the day on which the lesser part of that period

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falls shall be treated as a day of incapacity for work if that person was incapable of work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of incapacity for work, the second day shall be treated as a day of incapacity for work; and
- (b) if the days in question fall at the end of a period of incapacity for work, the first day shall be treated as a day of incapacity for work.

[^{F11}Calculating periods of incapacity for work for welfare to work beneficiaries E+W+S

5A. For the purposes of incapacity benefit, in the case of a person who has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 as a welfare to work beneficiary, section 30C(1)(c) of the Contributions and Benefits Act (any two periods of incapacity for work not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work) shall have effect as if for the reference to 8 weeks there were substituted a reference to [^{F12}104 weeks].]

Textual Amendments

- F11** Reg. 5A inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, 2
- F12** Words in reg. 5A substituted (9.10.2006) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **10(2)**

Calculating periods of incapacity for work for persons receiving certain regular treatment E+W+S

6.—(1) In the cases specified in paragraph (2), section 30C(1)(b) of the Contributions and Benefits Act (which defines a period of incapacity for work) shall have effect as if the period of 4 days mentioned there were a period of 2 days, whether consecutive or not, within a period of 7 consecutive days.

(2) The cases referred to in paragraph (1) are those where the days of incapacity for work in question result from—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis, by way of parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

Days of statutory sick pay to be included in days of entitlement to incapacity benefit E+W+S

7.—(1) For the purposes of section 30D(3) of the Contributions and Benefits Act (which provides for days of entitlement to statutory sick pay to be included in calculating the number of days for which a person has been entitled to short-term incapacity benefit) the days which are to be included are any of the days specified in paragraph (2) which—

- (a) fell within a period of entitlement to statutory sick pay as between that person and his employer which ended not later than the 57th day before the first day of the period of incapacity for work to which that calculation relates; and
 - (b) fell on or after a day on which the person satisfied the contribution conditions for short-term incapacity benefit.
- (2) The specified days are—
- (a) in any week in which the employer was liable to pay that person statutory sick pay at the weekly rate specified in section 157(1) of the Contributions and Benefits Act, each day of that week; and
 - (b) in any week in which the employer was liable to pay that person statutory sick pay at a fraction of that weekly rate, each of the days of that week which would comprise the same fraction of a 7 day week; and any fractions of days produced by that calculation shall be included in the calculation for the following week and for any fraction of a day not accounted for at the end of that period of entitlement one additional day shall be added.

[^{F13}Effect of statutory maternity pay on incapacity benefit E+W+S

7A.—(1) For the purpose of determining a woman’s entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, a day which falls within the maternity pay period shall, notwithstanding paragraph 1 of Schedule 13 to that Act, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where—

- (a) on that day she was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the maternity pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part 11 of the Contributions and Benefits Act; and
- (d) the woman either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, as being a day on which the woman has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a woman is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to her for that week shall be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to her.]

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Textual Amendments

F13 Reg. 7A, 7B inserted (24.11.2002) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(a), **10(1)**

[^{F13}Effect of statutory adoption pay on incapacity benefit **E+W+S**]

7B.—(1) For the purpose of determining a person’s entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, a day which falls within the adoption pay period shall, notwithstanding section 171ZP(1) of the Contributions and Benefits Act, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where—

- (a) on that day he was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the adoption pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part 11 of the Contributions and Benefits Act; and
- (d) the person either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, as being a day on which the person has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a person is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to him for that week shall be reduced by an amount equivalent to any statutory adoption pay to which he is entitled in accordance with Part 12ZB of the Contributions and Benefits Act for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to him.]

Textual Amendments

F13 Reg. 7A, 7B inserted (24.11.2002) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(a), **10(1)**

[^{F14}Inclusion of days of sickness absence from duty before discharge from Her Majesty’s forces in calculating days of entitlement to incapacity benefit **E+W+S**]

7C.—(1) For the purpose of section 30D(3A) of the Contributions and Benefits Act (days to be included in respect of person discharged from Her Majesty’s forces after 3rd May 2003 when

calculating the number of days for which the person has been entitled to short-term incapacity benefit) there is prescribed any day which falls within a period—

- (a) of 4 or more consecutive days each of which is a day which is recorded by the Secretary of State for Defence as a day on which the person was on sickness absence from duty; and
- (b) which ends not more than 8 weeks before the first day of the period to which the claim for incapacity benefit relates.

(2) For the purpose of paragraph (1)(a) any two such periods not separated by a period of more than 8 weeks shall be treated as one period.]

Textual Amendments

F14 Reg. 7C inserted (5.5.2003) by [The Social Security \(Incapacity Benefit\) \(Her Majesty's Forces\) \(Amendment\) Regulations 2003 \(S.I. 2003/1068\)](#), regs. 1, 2

Limit of earnings from councillor's allowance **E+W+S**

[^{F15}8.—(1) For the purpose of section 30E(1) of the Contributions and Benefits Act (incapacity benefit: reduction for councillor's allowance) the prescribed amount is 16 x National Minimum Wage, subject to paragraph (3).

(2) In this regulation "National Minimum Wage" means the rate of the national minimum wage specified in regulation 11 of the National Minimum Wage Regulations 1999 (rate of the national minimum wage).

(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.]

Textual Amendments

F15 Reg. 8 substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 5

Councillor's allowance paid otherwise than weekly **E+W+S**

9.—(1) For the purposes of section 30E(2) of the Contributions and Benefits Act, where a councillor's allowance is paid otherwise than weekly, an amount calculated in accordance with paragraphs (2) and (3) shall be regarded as the weekly amount of the allowance.

(2) In the case of an attendance allowance, the weekly amount shall be the amount paid in respect of attendances undertaken in the week in question.

(3) In the case of a basic allowance or a special responsibility allowance, the weekly amount shall be calculated—

- (a) where that allowance is paid annually, by dividing the amount paid by 52;
- (b) where that allowance is paid quarterly, by dividing the amount paid by 13;
- (c) where that allowance is paid monthly, by multiplying the amount by 12 and dividing by 52; and
- (d) in any other case, by dividing the amount of the allowance by the number of days in the period and multiplying it by 7.

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