

1994 No. 2946

SOCIAL SECURITY

The Social Security (Incapacity Benefit) Regulations 1994

Made - - - - - 21st November 1994

Laid before Parliament 24th November 1994

Coming into force 13th April 1995

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SOCIAL SECURITY (**INCAPACITY BENEFIT**) REGULATIONS
1994

The Secretary of State for Social Security in exercise of the powers conferred on him by sections 30B(7), 30C(3), (4)(a) and (6), 30D(3), 30E(1) and (2), 122, and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made by virtue of sections 2(1) and 3(1) of the Social Security (Incapacity for Work) Act 1994(b) and is made before the end of the period of 6 months beginning with the coming into force of that Act, hereby makes the following Regulations.

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity Benefit) Regulations 1994 and shall come into force on 13th April 1995.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
“the Administration Act” means the Social Security Administration Act 1992(c); and
“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992.

(2) In these Regulations—

- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations; and
- (b) any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

►¹Disapplication of section 1(1A) of the Administration Act

2A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) ►²◄
- (b) to an adult dependant in respect of whom a claim for an increase of incapacity benefit is made or treated as made before 5th October 1998.◄
- ³(c) to an adult dependant who—
 - (i) is a person in respect of whom a claim for an increase of incapacity benefit is made;
 - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(d); and
 - (iii) has not previously been allocated a national insurance number.◄

►⁴PART 1A

CONTRIBUTION CONDITIONS : SUPPLEMENTARY PROVISIONS

Relaxation of the first contribution condition in certain cases

2B.—(1) For the purposes of sub-paragraph (2)(a) of paragraph 2 of Schedule 3 to the Contributions and Benefits Act(e) (first contribution condition) a person who

- (a) 1992 c. 4. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and sections 30C, 30D and 30E were inserted by section 3(1) of that Act. Section 122 is cited for the definition of “prescribe” contained in that section.
- (b) 1994 c. 18. See section 173(5)(a) of the Social Security Administration Act 1992 (c. 5), the effect of which is that regulations made before the end of 6 months from the coming into force of the enactment under which they are made are not required to be referred to the Social Security Advisory Committee.
- (c) 1992 c. 5.
- (d) 1999 c. 33.
- (e) 1992 c. 4 Sub-paragraph (2)(a) of paragraph 2 of Schedule 3 was inserted by section 62(2) of the Welfare Reform and Pensions Act 1999 (c. 30).

¹Reg. 2A inserted by reg. 9 of S.I. 1997/2676 as from 1.12.97.

²Reg. 2A(a) omitted by reg. 2(8) of S.I. 2003/937 as from 6.4.03

³Reg. 2A(c) inserted by reg. 6 of S.I. 2009/471 as from 6.4.09.

⁴Reg. 2B inserted by reg. 2(2) of S.I. 2000/3120 as from 6.4.01.

satisfies any of the conditions in paragraph (2) shall be taken to satisfy the first contribution condition if—

- (a) he paid contributions of a relevant class before the relevant time in respect of any one year; and
- (b) the earnings factor is derived—
 - (i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25, or
 - (ii) from Class 2 contributions multiplied by 25.

(2) The conditions referred to in paragraph (1) are that—

- (a) he was a person who, in the ►¹last complete tax year◄ ►²immediately preceeding the relevant benefit year in which◄ the first day of incapacity for work ►²occurred◄, was entitled to ►³carer's allowance◄ under section 70 of the Contributions and Benefits Act(a) or would have been in receipt of the ►³carer's allowance◄ but for the provision of regulation 4 of the Social Security (Overlapping Benefits) Regulations 1979(b);
- (b) immediately before the first day of incapacity for work, he was a person—
 - (i) who had been engaged in remunerative employment for a period of more than 2 years, and
 - (ii) who was entitled to disability working allowance or disabled person's tax credit, as the case may be, under section 129 of the Contributions and Benefits Act(c) throughout that period; or
 - ⁴(iii) who was entitled to working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 was included in the award; or◄
- ⁵(ba) he is, in respect of any week in any tax year preceding the relevant benefit year, a person who—
 - (i) is entitled to be credited with earnings or, as the case may be, contributions in accordance with regulation 9D of the Social Security (Credits) Regulations 1975 (credits for certain periods of imprisonment or detention in legal custody), or
 - (ii) would be so entitled had he made an application to the Secretary of State for the purpose of that regulation;◄
- (c) he is, on the first day of his incapacity for work, a person who had received incapacity benefit in the last complete tax year immediately preceding the relevant benefit year he again becomes entitled to it.◄

¹Words substituted in reg. 2B(2)(a) by reg. 2(2) of S.I. 2001/1305 as from 25.4.01.

²Words substituted & inserted in reg. 2B(2)(a) by reg. 3(a) of S.I. 2001/2979 as from 1.10.01.

³Words substituted in reg. 2B(2)(a) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

⁴Head (iii) inserted in reg. 2B(2)(b) by para. 4 of Sch. 4 to S.I. 2003/455 as from 7.4.03.

⁵Sub-para (ba) inserted in reg. 2B(2) by reg. 3 of S.I. 2001/573 as from 6.4.01.

PART II

ENTITLEMENT TO INCAPACITY BENEFIT: SUPPLEMENTARY PROVISIONS

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

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.

(a) Section 70 was amended by S.I. 1994/2556.

(b) S.I. 1979/597. Regulation 4 was amended by S.I. 1984/1303, 192/3194, 1995/829 and 1996/1345 and 3209. See paragraph 11 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) in relation to the repeal of section 18 of the Social Security Act 1998 (c. 50) which amended regulation 4.

(c) Section 129 was amended by sections 1 and 14 of the Tax Credits Act 1999 (c. 10).

Reg. 4

Days not to be treated as days of incapacity for work

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);

¹Sub-para (iv) inserted in reg. 4(1)(a) by reg. 2 of S.I. 1999/2226 as from 6.9.99.

²Sub-para. (aa) inserted in reg. 4(1) by reg. 2(3) of S.I. 2000/3120 as from 6.4.01.

- ▶¹(iv) subject to regulation 2A(a), is not entitled to incapacity benefit because section 1(1A) of the Administration Act(b) (requirement to state national insurance number) applies.◀
- ▶²(aa) a day which is for the purposes of section 30A(2A)(c) of the Contributions and Benefits Act(c) (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(d) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(e).

(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
- (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(f).

³Sub-para (c) inserted in reg. 4(2) by reg. 5 of S.I. 2000/678 as from 3.4.00.

⁴Reg. 4(2)(d) & (3) inserted by reg. 3 of S.I. 2006/2144 as from 1.9.06.

- ▶³(c) where such payment 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.◀▶⁴, 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.

(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

(a) Regulation 2A was inserted by S.I. 1997/2676.

(b) 1992 c. 5 Section 1(1A) was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 19.

(c) 1992 c. 4 Section 30A(1)(b) and (2A) were inserted by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).

(d) 1973 c. 50.

(e) 1990 c. 35.

(f) S.I. 1975/563. The relevant amending instrument is S.I. 1990/40.

84(1)(g) of the Jobseeker's Allowance Regulations 1996(a) or regulation 17(1)(e) or 18(1)(f) of the Income Support (General) Regulations 1987(b) 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.◀

►¹**Days to be treated as days of incapacity for work**

4A.►²—(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.◀

►²(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(c) (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—

►³◀

“credits for incapacity for work or approved training” means earnings credited pursuant to the Social Security (Credits) Regulations 1975(d) 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 ►³the 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.◀

Night Workers

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

(a) S.I. 1996/207. Relevant amending instrument is S.I. 2001/3767.

(b) Relevant amending instrument are S.I. 1998/1288, 1996/206, 2001/3767.

(c) S.I. 1975/556. Regulation 8D was inserted by S.I. 2007/2582.

(d) Credits for approved training are made under regulation 7, which was amended by S.I. 1987/414, 1988/1439 and 1988/1545. Credits for incapacity for work are made under regulation 8B which was inserted by S.I. 1996/2367 and were made under regulation 9 before the amendments made by S.I. 1996/2367.

¹Reg. 4A inserted by reg. 2(4) of S.I. 2000/3120 as from 6.4.01.

²Reg. 4A renumbered as para. (1) and paras. (2) & (3) added by reg. 6(2) & (3) of S.I. 2007/2618 as from 1.10.07.

³In reg. 4A(3), defn. of “Commissioner” omitted & words substituted by art. 65(a) & (b) of S.I. 2008/2683 as from 3.11.09.

Regs. 5-7A

(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.

¹Reg. 5A inserted by reg. 2 of S.I. 1998/2231 as from 5.10.98.

►¹Calculating periods of incapacity for work for welfare to work beneficiaries

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 ►²104 weeks◄.◄

²Words substituted in reg. 5A by reg. 10(2) of S.I. 2006/2378 as from 1.10.06.

Calculating periods of incapacity for work for persons receiving certain regular treatment

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

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.

³Reg. 7A inserted by reg. 10(1) of S.I. 2002/2690 as from 24.11.02.

►³Effects of statutory maternity pay on incapacity benefit

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 Benefit Act(a), 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(b) 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 II 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 for 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 Benefit 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.◀

▶¹Effect of statutory adoption pay on incapacity benefit

¹Reg. 7B inserted by reg. 10(2) of S.I. 2002/2690 as from 8.12.02.

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(c), 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

(a) S. 30A was inserted by s. 1(1) of the Social Security (Incapacity for Work) Act 1994 and was amended by s. 64 and 88 of the Welfare Reform and Pensions Act 1999.

(b) S. 30C(3) was inserted by s. 3(1) of the Social Security (Incapacity for Work) Act 1994.

(c) S. 171ZP(1) was inserted by s. 4 of the Employment Act 2002.

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(a) 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.◀

¹Reg. 7C inserted by reg. 2 of S.I. 2003/1068 as from 5.5.03.

►¹**Inclusion of days of sickness absence from duty before discharge from Her Majesty’s forces in calculating days of entitlement to incapacity benefit**

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.◀

Limit of earnings from councillor’s allowance

²Reg. 8 substituted by reg. 5 of S.I. 2011/674 as from 11.4.11.

►²**8.**—(1) For the purposes 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.◀

Councillor’s allowance paid otherwise than weekly

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.

(a) Part 12ZB was inserted by s. 4 of the Employment Act 2002.

PART III
RATE OF INCAPACITY BENEFIT

Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date

10.—(1) The weekly rate of long-term incapacity benefit under section 30A of the Contributions and Benefits Act (incapacity benefit: entitlement)(a) in relation to a period of incapacity for work shall be increased—

- (a) by the higher amount specified in paragraph (2) if on the qualifying date the beneficiary was under the age of 35; and
- (b) by the lower amount specified in that paragraph if on the qualifying date the beneficiary had attained the age of 35 but was under the age of 45.

(2) The amounts referred to in paragraph (1) are—

- (a) higher amount▶¹£21.50◀;
- (b) lower amount▶¹£10.80◀.

For cases involving ‘long-term incapacity benefit’ in reg. 10(2), see art. 11(2) of S.I. 2015/457 to see when to reduce amounts in certain cases.

¹Amounts substituted in reg. 10(2) by art. 11(1)(a) & (b) of S.I. 2015/457 as from 6.4.15.

Qualifying date for entitlement to increased rate of incapacity benefit—previous entitlement to statutory sick pay

11. For the purposes of regulation 10 the qualifying date in relation to a person to whom regulation 7 applies shall be the first day in the period of entitlement mentioned in paragraph (1)(a) of that regulation.

Qualifying date for entitlement to increased rate of incapacity benefit—members of the armed forces

12.—(1) If, for the purposes of regulation 10, the qualifying date in relation to a person would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act (incapacity benefit: rate) but for the fact that on that earlier date he was a serving member of the forces, the qualifying date in relation to him shall nevertheless be that earlier date.

(2) In this regulation “serving member of the forces” has the meaning given to it by regulation 1(2) of the Social Security (Contributions) Regulations 1979(b), except that it does not include a person who falls within that definition by reason only of the fact that he was undergoing training or instruction for a continuous period of not more than 72 hours in any of the forces specified in paragraphs 2 to 9 of Part I of Schedule 3 to those Regulations.

Qualifying date for entitlement to increased rate of incapacity benefit—widows

13. If, for the purposes of regulation 10, the qualifying date in relation to a person who was entitled to a widow’s allowance would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act, if in respect of that earlier date she had claimed short-term incapacity benefit and had satisfied the contribution conditions for that benefit specified in paragraph 2 of Schedule 3 to the Contributions and Benefits Act(c), the qualifying date in relation to her shall nevertheless be that earlier date.

(a) S. 30A was inserted by s. 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).
(b) S.I. 1979/591. The relevant amending instruments are S.I. 1980/1975 and 1994/1553.
(c) Paragraph 2 of Schedule 3 was amended by section 1(2) and 3(2) of, and paragraph 38(2) of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994 (c. 18).

Regs. 14-15

¹Parts IV and V inserted
by reg. 2(5) of S.I.
2000/3120 as from
6.4.01

▶¹PART IV

ADDITIONAL CONDITIONS FOR PERSONS INCAPACITATED IN YOUTH

General

14. This Part of these Regulations applies to persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act(a).

Age Exception - Persons aged 20 and under 25

15.—(1) For the purposes of subsection (2A)(b) of section 30A of the Contributions and Benefits Act (prescribed cases in relation to persons aged under 25 and above the age 20 limit), a person falls within a prescribed case if he satisfies the conditions specified in the following paragraphs.

(2) The conditions referred to in paragraph (1) are that, he is a person who—

(a) registered on a course of—

(i) full-time advanced or secondary education, or

(ii) vocational or work-based training,

at least 3 months before he attained the age of 20 years; and

(b) not more than one academic term immediately after registration under sub-paragraph (a), attended one or more such courses of education or training as are mentioned in that sub-paragraph ▶²in respect of a period◀ referred to in paragraph (3).

(3) The period mentioned in paragraph (2)(b) is a period which—

(a) began on or before a day at least 3 months before the day he attained the age of 20 years, and

▶²(b) ended no earlier than the beginning of the last two complete tax years before the benefit year which would have governed a claim for incapacity benefit under section 30A(1)(a) of the Contributions and Benefits Act had he been eligible for it.◀

(4) For the purposes of this regulation a person is attending a course of education or training on any day on which the course or training is interrupted by an illness or domestic emergency.

(5) For the purposes of this regulation—

“advanced education” means full-time education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of Sixth Year Studies;

“course of education” means a course of advanced education or secondary education;

“full-time” includes part-time where the disability from which a person suffers prevents him from attending a full-time course;

“relevant day” has the same meaning as in section 30A(1) of the Contributions and Benefits Act, that is to say, the day—

(a) in respect of which a person is entitled to claim incapacity benefit;

(b) which falls on any day immediately after a period of 196 consecutive days of incapacity for work; and

²Reg. 15(3)(b) and words in reg. 15 (2)(b) substituted by reg. 2(3) of S.I 2001/1305 as from 25.4.01

(a) 1992 c. 4. Section 30A(1) was amended by section 64(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and section 30A(2A) was inserted by section 64(3) of that Welfare Reform and Pensions Act.

(c) which forms part of a period of incapacity for work;

“secondary education” means a full-time course of education below a course of advanced education—

(a) by attendance at a recognised educational establishment within the meaning of section 147(1) of the Contributions and Benefits Act, or

(b) elsewhere than at a recognised educational establishment, where the Secretary of State is satisfied that the education is equivalent to that given in a recognised educational establishment;

“training” has the same meaning as vocational training or work-based training;

“vocational training” means training for work as defined for the purposes of section 30C(6) of the Contributions and Benefits Act and in regulation 3, and includes any training, instruction or tuition (of which the primary purpose is the teaching of occupational or vocational skills) received on a course provided, for persons suffering mental or physical disability, by a person recognised by the Secretary of State; and

“work-based training” means vocational training undertaken on the premises of an employer.

Conditions relating to residence or presence

16.—(1) The prescribed conditions for the purposes of section 30A(2A)(d) of the Contributions and Benefits Act as to residence or presence in Great Britain in relation to any person on the relevant day shall be that on that day—

- (a) he is ordinarily resident in Great Britain;
- (b) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999^(a) or he is a person to whom paragraph (5) applies;
- (c) he is present in Great Britain; and
- (d) he has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day.

▶¹◀

(4) In determining whether a person satisfies paragraph (1), where a person is absent from Great Britain by reason only of the fact that—

- (a) he is abroad in his capacity as a serving member of the forces, or he is the spouse, ▶²civil partner, ◀ son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a serving member of the forces abroad;
- (b) he is in employment prescribed for the purposes of section 120 of the Contributions and Benefits Act^(b) in connection with continental shelf operations^(c); or
- (c) he is abroad in his capacity as an airman within the meaning of regulation 81, or mariner within the meaning of regulation 86, of the Social Security (Contributions) Regulations 1979^(d);

¹Reg. 16(2) & (3) omitted by reg. 10(4) of S.I. 2006/2378 as from 1.10.06.

²Words inserted in reg. 16(4)(a) by para. 24 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

any day or period of absence shall be treated as a day on which, or period during which, the person is present or resident, as the case may be, in Great Britain; and for the purposes of this paragraph “serving member of the forces” has the same meaning as in regulation 1(2) of the Social Security (Contributions) Regulations 1979.

(a) 1999 c. 33.

(b) Section 120 was amended by Schedule 7 to the Social Security Act 1998 (c. 14) and Schedules 3 and 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(c) See regulation 85 of the Social Security (Contributions) Regulations 1979 (S.I. 1079/591 as amended by S.I. 1982/1738).

(d) S.I. 1079/591

- (5) This paragraph applies where a person is—
- (a) a member of a family of a national of a State contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(a);
 - (b) a person who is lawfully working in Great Britain and is a national of a State with which the Community has concluded an agreement under Article 310(b) of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts(c) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
 - (c) a person who is a member of a family of, and living with, a person specified in sub-paragraph (b); or
 - (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971(d) to be responsible for his maintenance and accommodation.
- (6) A person shall be treated as having satisfied the residence or presence conditions on any subsequent day of incapacity for work falling within the same period of incapacity for work where the residence or presence conditions specified in paragraphs (1) to (4) are satisfied on the first relevant day.

Circumstances in which a person is or is not to be treated as receiving full-time education

17.—(1) This regulation applies for the purposes of section 30A(7) of the Contributions and Benefits Act(e) (the circumstances in which a person is or is not to be treated as receiving full-time education for the purposes of section 30A(2A)(e) of that Act).

(2) A person shall be treated as receiving full-time education for any period during which—

- (a) he is 16 years of age or over but under the age of 19 years; and
- (b) he attends a course of education for 21 hours or more in a week.

(3) For the purposes of paragraph (2)(b), in calculating the number of hours a week during which a person attends a course, no account shall be taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability.

(4) In determining the duration of a period of full-time education under paragraph (2), any temporary interruption of that education may be disregarded.

(5) A person who is 19 years of age or over shall not be treated for the purposes of section 30A(2A)(e) of the Contributions and Benefits Act as receiving full-time education notwithstanding he is undergoing a full-time education.

Circumstances in which a previous claimant who does not satisfy the age condition becomes entitled

18.—(1) This regulation applies, for the purposes of section 30A(6) of the Contributions and Benefits Act(f), to a person who has previously been entitled to incapacity benefit under section 30A(1)(b) of that Act (persons incapacitated in youth) and does not satisfy the condition set out in section 30A(2A)(b) of that Act (upper age condition).

(a) OJ No. L1.3.1. 1994, p. 3.

(b) Article 310 EC (ex Article 23.8).

(c) OJ No. C340, 10.11.97, p. 1.

(d) 1971 c. 77.

(e) Section 30A(7) was inserted by section 64(5) of the Welfare Reform and Pensions Act 1999 (c. 30).

(f) Section 30A(6) was inserted by section 64(5) of the Welfare Reform and Pensions Act 1999 (c. 30).

- (2) A person shall be entitled to the lower rate short-term incapacity benefit where—
- (a) he has previously been entitled to incapacity benefit by virtue of having been a person incapacitated in youth under section 30A(1)(b) and (2A) of the Contributions and Benefits Act;
 - (b) his previous entitlement had not been ended by a determination (other than a determination in the circumstances applicable to a person under paragraph (3)(a) or (4)(a)) that he was, or was treated as, capable of work;
 - (c) section 30C(1)(c), (5) or (6) of the Contributions and Benefits Act (days and periods of incapacity for work) or any regulation made under section 30C(4)(b) (linking provisions) does not apply in his case;
 - (d) he is aged 20 years or over, or, where regulation 15 would otherwise apply to him, aged 25 years or over; and
 - (e) he is a person to whom paragraph (3) or (4) applies.

(3) This paragraph applies to a person—

- (a) whose previous entitlement to incapacity benefit for a person incapacitated in youth was terminated solely with a view to him taking up an employment or training;
- (b) whose earnings ►¹factor◄ from an employment or series of employments, which he pursued in the period from the termination of his previous entitlement to the beginning of his period of incapacity for work, ►¹was◄ below the lower earnings limit in accordance with section 5(1)(a) of the Contributions and Benefits Act(a) multiplied by 25 in any of the last three complete tax years before the beginning of the relevant benefit year; and
- (c) who—
 - (i) in respect of the last two complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of disabled person's tax credit; or
 - (ii) within a period of 56 days after the day he ceased his last such employment as he pursued in accordance with sub-paragraph (b), makes a claim for incapacity benefit for persons incapacitated in youth.

¹Words inserted and substituted in reg. 18(3)(b) by reg. 2(4) of S.I 2001/1305 as from 25.4.01.

(4) This paragraph applies to a person—

- (a) whose previous entitlement to incapacity benefit for persons incapacitated in youth was terminated by reason solely of his absence from Great Britain by virtue of disqualification under section 113 of the Contributions and Benefits Act;
- (b) who has been incapable of work for a period of 196 consecutive days from the day of his absence from Great Britain ceased;
- (c) ►²◄
- ²(d) who made his claim for benefit on a day not later than 3 months from the end of the period of 196 days described in sub-paragraph (b).◄

²Para. (c) of reg. 18(4) omitted & para. (d) substituted by reg. 3(2) of S.I 2002/2311 as from 1.1.03.

(5) For the purposes of this regulation, "training" has the same meaning as in regulation 15.

Persons formerly entitled to severe disablement allowance

19.—(1) Where a person was below the age of 20 years ►³on 6th April◄ and was entitled to, or receiving, severe disablement allowance by virtue of section 68(1) of the Contributions and Benefits Act on or immediately before 5th April 2002, he shall, if he continues to be incapable of work in accordance with Part XIII A of the Contributions and Benefits Act, be—

³Words in reg. 19(1) substituted by reg. 4 of S.I 2002/491 as from 8.4.02.

- (a) entitled to the long-term incapacity benefit from 6th April 2002; and
- (b) treated as having acquired entitlement under section 30A(1)(b) and (2A) of the Contributions and Benefits Act; and

(a) Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act (c. 30).

- (c) treated as if section 30DD of the Contributions and Benefits Act(a) does not apply in his case.

¹Words in reg. 19(2) substituted by reg. 4 of S.I. 2002/491 as from 8.4.02.

(2) Where a person was below the age of 20 years ¹on 6th April⁴ and was entitled to, or receiving, severe disablement allowance by virtue of section 68(1) of the Contributions and Benefits Act and to whom section 30C(1) to (4) or section 68(10) or (10A), or regulations made under section 30C(4)(b), of that Act(b) applied on or immediately after 5th April 2002, he shall be—

- (a) entitled to the long-term incapacity benefit from the relevant day; and
(b) treated as having acquired entitlement under section 30A(1)(b) and (2A) of the Contributions and Benefits Act; and
(c) treated as if section 30DD of the Contribution and Benefits Act does not apply in his case.

PART V

REDUCTION OR ABATEMENT OF INCAPACITY BENEFIT FOR OCCUPATIONAL OR OTHER PENSION PAYMENTS

Permanent health insurance

20. For the purposes of section 30DD of the Contributions and Benefits Act(c) (incapacity benefit: reduction for pension payments)—

- (a) pension payment shall include permanent health insurance payment; and
(b) “permanent health insurance payment” means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness, disability, infirmity or defect, in relation to a former employee on the termination of his employment.

²Reg. 20A inserted by reg. 2 of S.I. 2009/792 as from 27.3.09.

²Financial assistance scheme

20A. For the purposes of section 30DD of the Contributions and Benefits Act (incapacity benefit: reduction for pension payments and PPF periodic payments), “pension payment” includes a payment made under the Financial Assistance Scheme Regulations 2005 to a person who first became entitled to such a payment on or after the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 came into force.⁴

Disregard of certain pension payments

21. For the purposes of section 30DD(1) of the Contributions and Benefits Act (reduction for pension payments ³and PPF periodic payments(d)⁴), there shall be disregarded—

³Words inserted in regs. 21 & 22 and sub-para. (aa) added to reg. 21 by regs. 4(2) & (3) of S.I. 2006/1069 as from 5.5.06.

- (a) any pension payment within the meaning of section 30DD(5) of the Contributions and Benefits Act made to a person as a beneficiary on the death of a member of any pension scheme;
³(aa) any PPF periodic payment made to a person as a beneficiary on the death of a person entitled to such a payment;⁴
(b) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall; or
(c) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50 per cent.

(a) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30).

(b) Section 68(10A) was inserted by section 9(2) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(c) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30.)

(d) The definition of “PPF periodic payments” was inserted into section 122(1) of the Social Security Contributions and Benefits Act 1992 by S.I. 2006/343).

Date from which pension payment is to be taken into account

22. Where section 30DD(1) of the Contributions and Benefits Act (reduction for pension payments ¹and PPF periodic payments[◀]) applies, deductions shall have effect, calculated, where appropriate, in accordance with regulation 24 (pension payments made other than weekly), from the first day of the week, commencing on Sunday, in which the pension payment ¹or PPF periodic payments[◀] is paid to a person who is entitled to incapacity benefit in that week.

¹Words inserted in regs. 21 & 22 and sub-para. (aa) added to reg. 21 by regs. 4(2) & (3) of S.I. 2006/1069 as from 5.5.06.

Date from which the change in the rate of pension takes effect

23. Where pension payments ²or PPF periodic payments[◀] are already in payment to a person and the rate of payment changes, the deduction at the new rate shall take effect, calculated, where appropriate, in accordance with regulation 24 (pension payments made other than weekly), from the first day of the week, commencing on Sunday, in which the new rate of the pension payment ²or PPF periodic payment[◀] is paid.

²Words inserted in reg. 23 by regs. 4(4)(a) & (b) of S.I. 2006/1069 as from 5.5.06.

Pension payment made other than weekly

24.—(1) Where a pension payment ³or PPF periodic payment[◀], or an aggregate of such payments, as the case may be, is paid to a person for a period other than a week, such payments shall be treated as being made to that person by way of weekly pension payments ³or weekly PPF periodic payments[◀] and the weekly amount shall be determined—

³Words inserted in regs. 24(1), (2) & (3) by regs. 4(5)(a)-(c) of S.I. 2006/1069 as from 5.5.06.

- (a) where payment is made for a year, by dividing the total by 52;
- (b) where payment is made for 3 months, by dividing the total by 13;
- (c) where payment is made for a month, by multiplying the total by 12 and dividing the result by 52;
- (d) where payment is made for 2 or more months, otherwise than for a year or for 3 months, by dividing the total by the number of months, multiplying the result by 12 and dividing the result of that multiplication by 52; or
- (e) in any other case, by dividing the amount of the payment by the number of days in the period for which it is made and multiplying the result by 7.

(2) In determining the weekly amount of the pension payment ²or PPF periodic payment[◀]—

- (a) there shall be disregarded the sum of less than one half of a penny; and
- (b) the sum of one half of a penny or more but less than one penny shall be rounded up to one penny.

(3) In determining the weekly pension payment ²or weekly PPF periodic payments[◀], where two or more pension payments ²or PPF periodic payments[◀] are payable to a person, each pension payment ²or PPF periodic payment[◀] shall be calculated separately in accordance with paragraph (1) before aggregating the sum of those payments for the purposes of the reduction of the benefit in accordance with section 30DD(1) of the Contributions and Benefits Act.

Priority of deductions of pension payments taken as payable for the purposes of reduction of incapacity benefit

25. Where a reduction in the rate of incapacity benefit payable to a person falls to be made in accordance with section 30DD(1) of the Contributions and Benefits Act the reduction shall be made, so far as is necessary—

- (a) initially against so much of the benefit as falls to be paid at the personal rate;
- (b) then against any increase in the benefit payable for adult dependants; and
- (c) finally against any increase in the benefit payable for dependent children.

Person whose benefit is not to be reduced under section 30DD(1)

26. Section 30DD(1) of the Contributions and Benefits Act (reduction of incapacity benefit for pension payments) shall not apply to a person who is entitled to the highest rate of the care component of disability living allowance under section 72 of the

Reg. 26

¹Words inserted in reg. 26 by para. 9(2) of Sch. to S.I. 2013/591 as from 8.4.13.

²Words inserted in reg. 26 by para. 15 of Sch. to S.I. 2013/388 as from 8.4.13.

Contributions and Benefits Act ►¹, armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011◄ ►²or the enhanced rate of the daily living component of personal independence payment under section 78(2) of the Welfare Reform Act 2012◄◄.

Signed by authority of the Secretary of State for Social Security

21st November 1994

William Hague
Minister of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for matters concerning entitlement to and the rate of incapacity benefit, which benefit was introduced into Part II (contributory benefits) of the Social Security Contributions and Benefits Act 1992 (c. 4) by the amendments to that Act made by sections 1 to 3 of the Social Security (Incapacity for Work) Act 1994.

Part I contains general provisions affecting the citation, commencement and interpretation of these Regulations.

Part II contains various provisions affecting entitlement to incapacity benefit. In particular these relate to the calculation of periods of incapacity (regulations 4 to 6) and periods of entitlement to incapacity benefit (regulation 7). This Part also prescribes the limit of permitted earnings from a councillor's allowance and the method of calculating such earnings (regulations 8 and 9).

Part III contains provision for long-term incapacity benefit to be payable at an increased rate on account of age. Where a person is under the age of 35 on the qualifying date the rate of long-term incapacity benefit is to be increased by £12.15 a week, and where he is over that age but under the age of 45 the rate is to be increased by £6.10 a week (regulation 10).

The qualifying date is normally the first day of the period of incapacity for work in question, but regulations 11, 12 and 13 make special provision for certain persons who have been entitled to receive statutory sick pay from an employer, persons who have been serving members of the forces and widows.

These Regulations are made before the expiry of 6 months from the commencement of the provisions under which they are made and are accordingly exempt by section 173(5)(a) from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations do not impose any costs on business.