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STATUTORY INSTRUMENTS

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**1995 No. 310**

**The Social Security (Incapacity Benefit)  
(Transitional) Regulations 1995**

**PART II**

**PROVISIONS COMMON TO THE TRANSITION TO INCAPACITY  
BENEFIT FROM SICKNESS BENEFIT AND INVALIDITY BENEFIT**

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

**2.—**(1) For the purposes of a transitional award of incapacity benefit under regulations 11 and 17 and for the purposes of enabling a claim for incapacity benefit to be made on or after the appointed day on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day—

- (a) days before the appointed day which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit and days specified in paragraph (2) shall be treated as having been days of incapacity for work; and
  - (b) days of entitlement to sickness benefit or invalidity benefit and days specified in paragraph (3) shall be treated as having been days of entitlement to incapacity benefit.
- (2) The specified days referred to in paragraph (1)(a) are—
- (a) any Sunday before the appointed day which—
    - (i) immediately follows a day of incapacity for work; and
    - (ii) immediately precedes a day of incapacity for work; and
    - (iii) does not fall within a period of disqualification by virtue of section 32 of the 1992 Act and the provisions in regulation 17 of the Unemployment, Sickness and Invalidity Benefit Regulations in force immediately before the appointed day; and
    - (iv) falls within a period of interruption of employment running at the appointed day;
  - (b) any Sunday which immediately follows a day of incapacity for work in a period of interruption of employment which comes to an end on a Saturday.
- (3) The specified days referred to in paragraph (1)(b) are—
- (a) any Sunday which falls within the description specified in paragraph (2)(a) and (b);
  - (b) days which are deemed to be days of entitlement to sickness benefit under regulation 7A of the Unemployment, Sickness and Invalidity Benefit Regulations;
  - (c) the seventh day in any week in which an employer was liable to pay a person statutory sick pay at the weekly rate specified in section 157(1) of the 1992 Act; and
  - (d) any additional days which would have been taken into account for sickness benefit and invalidity benefit purposes had the days referred to in the provisions in regulation 7A(4)(b) of the Unemployment, Sickness and Invalidity Benefit Regulations in force immediately

before the appointed day been days in the week beginning with a Sunday which would be comprised in a fraction of a seven-day week.

### **Linking periods of interruption of employment and periods of incapacity for work**

3. Where the last day of incapacity for work in a period of interruption of employment and the first day of incapacity for work in a period of incapacity for work are not separated by a period of more than 56 days, both these periods shall be treated as one period of incapacity for work.

### **Calculation of days in a period of incapacity for work**

4. The days referred to in regulation 2 shall be taken into account for the purposes of sections 30A(4) (length of entitlement to short-term incapacity benefit), 30B(2) (period after which short-term incapacity benefit is payable at higher rate) and 30B(4) (period after which incapacity benefit is payable at long-term rate) of the 1992 Act(1).

### **Claims for sickness benefit or invalidity benefit made on or after the appointed day**

5. Where a claim for sickness benefit or invalidity benefit is made on or after the appointed day in respect of a period of incapacity before the appointed day, the provisions in regulation 19 of, and paragraph 2 of Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987 (time for claiming benefit)(2) in force on the appointed day shall be read as if the reference to incapacity benefit were a reference to sickness benefit or invalidity benefit.

### **Interchange of sickness benefit and invalidity benefit with claims for other benefits**

6. Where a claim for sickness benefit, invalidity benefit, severe disablement allowance or maternity allowance is made in respect of a period before the appointed day, the provisions in regulation 9 of, and Part I of Schedule 1 to, the Social Security (Claims and Payments) Regulations 1987 (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative)(3) in force on the appointed day shall be read as if regulation 10(1), (2), (4) and (6) to (9) of the Social Security (Claims and Payments) Amendment (No. 2) Regulations 1994 had not come into force.

### **Persons deemed to be incapable of work**

7.—(1) A person who immediately before the appointed day is deemed to be incapable of work by virtue of regulation 3(3)(a)(ii) of the Unemployment, Sickness and Invalidity Benefit Regulations (persons deemed to be incapable of work)(4) shall continue to be so deemed on or after the appointed day notwithstanding that the work referred to in regulation 3(3)(a)(ii) is undertaken for 16 hours or more in the week in which it is performed.

(2) Paragraph (1) shall cease to apply—

- (a) when the period of incapacity for work comes to an end on or after the appointed day; or
- (b) when no work is undertaken for a period of not less than 57 continuous days in a period of incapacity for work.

(1) Sections 30A and 30B were inserted into the Social Security Contributions and Benefits Act 1992 by sections 1(1) and 2(1) respectively of the Social Security (Incapacity for Work) Act 1994.

(2) S. I. 1987/1968; the relevant amending instruments are S.I.1988/522, 1989/1686, 1991/2741 and 2284, 1993/2113 and 1994/2943.

(3) Regulation 10 of the Social Security (Claims and Payments) Amendment (No. 2) Regulations 1994 (S.I. 1994/2943) amends regulation 9 and Part I of Schedule 1 to the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968).

(4) S.I. 1983/1598; regulation 3 was amended by S.I. 1987/688, 1992/585, 1994/559 and 1994/1101.

### **Direct credit transfer**

8. Where a person had an award of sickness benefit or invalidity benefit which was payable by automated credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987<sup>(5)</sup>, and that award has effect as an award of incapacity benefit under regulations 11 or 17, the award of incapacity benefit shall continue to be paid by automated credit transfer into the same bank or other account as the award of sickness benefit or invalidity benefit; and for this purpose, any application made and any consent given in relation to the award of sickness benefit or invalidity benefit shall be treated as made or given in relation to the transitional award of incapacity benefit.

### **Disqualification**

9. Where immediately before the appointed day a person is disqualified by virtue of regulations made under section 32 or section 59 of the 1992 Act (disqualifications for sickness benefit and invalidity benefit), the period of disqualification in respect of sickness benefit or invalidity benefit shall continue to have effect and that person shall likewise be disqualified for receiving incapacity benefit for the period of disqualification which remains outstanding at the appointed day.

### **Suspension of payment of transitional awards**

10. Where the Secretary of State has made a direction to suspend payment of an award of sickness benefit or invalidity benefit in whole or in part, by virtue of regulations made under section 5(1)(n) of the Administration Act, that direction shall have effect as if it were made in respect of a transitional award of incapacity benefit and the payment of the transitional award of incapacity benefit shall likewise be suspended as if it were an award of sickness benefit or invalidity benefit.

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(5) S.I. 1987/1986; relevant amending instruments are S.I. 1992/247 and 1993/1113.