
STATUTORY INSTRUMENTS

1995 No. 310

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

PART VI

**PROVISIONS FOR THE TRANSITION TO THE
NEW TESTS OF INCAPACITY FOR WORK**

Application of the new tests of incapacity for work

31.—(1) Where it has been determined that a person is incapable of work for any purpose of the 1992 Act immediately before the appointed day and on or after the appointed day the all work test applies to him, he shall not be required to satisfy or be treated as having satisfied the condition of entitlement that he is incapable of work in accordance with that test until he has been assessed as to incapacity for work in accordance with regulations made under section 171C of the 1992 Act (the all work test)(1) or until it is determined that he falls within one of the cases mentioned in paragraph (5), so long as he satisfies the condition in paragraph (2).

(2) The condition referred to in paragraph (1) is that, in respect of each day, a person shall be required to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence in each case)(2).

(3) Subject to paragraph (4), a person who falls within one of the cases mentioned in paragraph (5) shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 171C of the 1992 Act (the all work test).

(4) Where it is determined that a person falls within one of the cases mentioned in paragraph (5) (a) to (c) and paragraphs (d) to (h) do not apply, that person shall continue to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976; and provided that such evidence is furnished he shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 171C of the 1992 Act.

(5) The cases referred to in paragraph (3) are—

(a) a person—

- (i) entitled to invalidity benefit on 1 December 1993 and on 12 April 1995; and
- (ii) between a period beginning on 1 December 1993 and ending on 13 April 1995, was not capable of work for that period or for two or more periods not separated by a period of more than 56 continuous days; and
- (iii) is aged 58 or over on the appointed day;

(b) a person—

(1) Section 171C was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

(2) S.I.1976/615; relevant amending instruments are S.I. 1982/699, 1987/409, 1991/2284, 1992/247 and 1994/2975.

- (i) entitled to income support, housing benefit or council tax benefit on 1 December 1993; and
- (ii) was incapable of work for a period of not less than 28 weeks immediately before 1 December 1993; and
- (iii) whose applicable amount included the disability premium on account of his own incapacity on 12 April 1995; and
- (iv) between the period beginning on 1 December 1993 and ending on 13 April 1995, was incapable of work for that period or for two or more periods not separated by a period of more than 56 continuous days; and
- (v) is aged 58 or over on the appointed day;
- (c) a person in receipt of a payment of an award of severe disablement allowance under section 68 of the 1992 Act immediately before the appointed day;
- (d) a person who was in receipt of a payment of an award of the highest rate of the care component of disability living allowance immediately before the appointed day and continues to be in receipt of such payment;
- (e) a person who is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (f) a blind person whose name is on a register compiled and maintained by a local authority in accordance with section 29 of the National Assistance Act 1948⁽³⁾ (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council;
- (g) a person suffering from one of the following conditions—
 - (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (h) a doctor approved by the Secretary of State has certified that person is suffering from any of the following conditions—
 - (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological or muscle wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;
 - (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
 - (vii) a severe and progressive immune deficiency state characterised by the occurrence of opportunistic infections or tumour formation;

⁽³⁾ 1948 c. 29; the relevant amendments to section 29 are in the Local Government Act 1972 section 195, Schedule 23 paragraph 25.

(viii) a severe mental illness.