
STATUTORY INSTRUMENTS

2000 No. 3120

**The Social Security (Incapacity Benefit)
Miscellaneous Amendments Regulations 2000**

Amendment of the Social Security (Incapacity Benefit) Regulations 1994

2.—(1) The Social Security (Incapacity Benefit) Regulations 1994(1) shall be amended in accordance with the following paragraphs of this regulation.

(2) After regulation 2A of the Social Security (Incapacity Benefit) Regulations 1994(2) (disapplication of section 1(1A) of the Administration Act) there shall be inserted the following—

“PART 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(3) (first contribution condition) a person who 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 relevant tax year before the first day of incapacity for work, was entitled to invalid care allowance under section 70 of the Contributions and Benefits Act(4) or would have been in receipt of the invalid care allowance but for the provision of regulation 4 of the Social Security (Overlapping Benefits) Regulations 1979(5);
- (b) immediately before the first day of incapacity for work, he was a person—

(1) S.I.1994/2946.

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

(3) 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).

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

(5) S.I. 1979/597. Regulation 4 was amended by S.I. 1984/1303, 1992/3194, 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 1986 (c. 50) which amended regulation 4.

- (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(6) throughout that period; or
 - (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.”
- (3) After paragraph (a) of regulation 4(1) of the Social Security (Incapacity Benefit) Regulations 1994(7) (days not to be treated as days of incapacity for work) there shall be inserted—
- “(aa) a day which is, for the purposes of section 30A(2A)(c) of the Contributions and Benefits Act(8) (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;”.
- (4) After regulation 4 of the Social Security (Incapacity Benefit) Regulations 1994 (days not to be treated as days of incapacity for work) there shall be inserted—

“Days to be treated as days of incapacity for work

4A. 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.”.

- (5) After Part III of the Social Security (Incapacity Benefit) Regulations 1994(9) (rate of incapacity benefit) there shall be inserted—

“PART 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(10).

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

(6) Section 129 was amended by sections 1 and 14 of the Tax Credits Act 1999 (c. 10).
(7) S.I. 1994/2946. Regulation 4 was amended by S.I. 1999/2226 and 2000/678.
(8) 1992 c. 4. Section 30A(1)(b) and (2A) were inserted by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).
(9) S.I. 1994/2946.
(10) 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.

- (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 in 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
 - (b) ended on a day—
 - (i) immediately before the relevant day, or
 - (ii) falling within one 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,whichever is the later.
- (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
 - (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⁽¹¹⁾ 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.
- (2) Where the relevant day falls within a period in which a person—
- (a) receives tax-free emoluments; or
 - (b) is the spouse of a person who receives tax-free emoluments;

that person shall not be regarded as present in Great Britain unless that period is immediately preceded by a period of 4 years during which he was present in Great Britain for a period of not less than 156 weeks in aggregate.

(3) For the purposes of paragraph (2), “tax free emoluments” means emoluments which are exempt from tax under any of the provisions listed in paragraph (1) of regulation 9 of the Child Benefit (General) Regulations 1976⁽¹²⁾.

(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, 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⁽¹³⁾ in connection with continental shelf operations⁽¹⁴⁾; 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⁽¹⁵⁾;

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

⁽¹¹⁾ 1999 c. 33.

⁽¹²⁾ S.I. 1976/965. Regulation 9 was amended by S.I. 1984/337 and 1996/1803.

⁽¹³⁾ 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).

⁽¹⁴⁾ See regulation 85 of the Social Security (Contributions) Regulations 1979 (S.I. 1979/591 as amended by S.I. 1982/1738).

⁽¹⁵⁾ S.I. 1979/591.

paragraph “serving member of the forces” has the same meaning as in regulation 1(2) of the Social Security (Contributions) Regulations 1979.

(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⁽¹⁶⁾;
- (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⁽¹⁷⁾ of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts⁽¹⁸⁾ 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 subparagraph (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⁽¹⁹⁾ 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⁽²⁰⁾ (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.

⁽¹⁶⁾ OJNo. L1.3.1.1994, p. 3.

⁽¹⁷⁾ Article 310 EC (ex Article 238).

⁽¹⁸⁾ OJ No. C340, 10.11.97, p. 1.

⁽¹⁹⁾ 1971 c. 77.

⁽²⁰⁾ Section 30A(7) was inserted by section 64(5) of the Welfare Reform and Pensions Act 1999 (c. 30).

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⁽²¹⁾, 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).

- (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 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, were below the lower earnings limit in accordance with section 5(1)(a) of the Contributions and Benefits Act⁽²²⁾ 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.
- (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) who, on the first day of his incapacity for work following the day his absence from Great Britain ceased, is a person who had received incapacity benefit for persons

⁽²¹⁾ Section 30A(6) was inserted by section 64(5) of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽²²⁾ Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30).

incapacitated in youth in the last complete tax year immediately preceding the relevant benefit year which would have applied in his case; and

- (d) who made his claim for benefit on a day not later than the 197th day from which his absence from Great Britain ceased.
- (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 immediately before 6th April 2001 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 XIIA of the Contributions and Benefits Act, be—

- (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
- (c) treated as if section 30DD of the Contributions and Benefits Act⁽²³⁾ does not apply in his case.

(2) Where a person was below the age of 20 years immediately before 6th April 2001 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⁽²⁴⁾ 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⁽²⁵⁾ (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.

⁽²³⁾ Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽²⁴⁾ Section 68(10A) was inserted by section 9(2) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

⁽²⁵⁾ Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30).

Disregard of certain pension payments

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

- (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;
- (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..

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) 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 is paid to a person who is entitled to incapacity benefit in that week.

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

23. Where pension 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 is paid.

Pension payment made other than weekly

24.—(1) Where a pension 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 and the weekly amount shall be determined—

- (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—
- (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, where two or more pension payments are payable to a person, each pension 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 Contributions and Benefits Act.”.