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STATUTORY INSTRUMENTS

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**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

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(1) 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(2) 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(3); and  
“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992.

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(1) 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.  
(2) 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.  
(3) 1992 c. 5.

(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.

## 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.

#### **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);
- (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(4) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(5).

(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(6).

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(4) 1973 c. 50.

(5) 1990 c. 35.

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

### **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.

(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.

### **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.

**Limit of earnings from councillor's allowance**

8. For the purposes of section 30E(1) of the Contributions and Benefits Act (net amount of councillor's allowance in excess of prescribed amount to be deducted from incapacity benefit) the prescribed amount is £43.00.

**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.

**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)(7) 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 ... ..£12.15;
- (b) lower amount ... ..£6.10.

**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.

(7) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

### **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<sup>(8)</sup>, 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<sup>(9)</sup>, the qualifying date in relation to her shall nevertheless be that earlier date.

Signed by authority of the Secretary of State for Social Security.

21st November 1994

*William Hague*  
Minister of State,  
Department of Social Security

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<sup>(8)</sup> S.I. 1979/591. The relevant amending instruments are S.I. 1980/1975 and 1994/1553.

<sup>(9)</sup> Paragraph 2 of Schedule 3 was amended by sections 1(2) and 3(2) of, and paragraph 38(2) of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994 (c. 18).

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## 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.