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STATUTORY INSTRUMENTS

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**1995 No. 310**

**SOCIAL SECURITY**

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

*Made* - - - - *10th February 1995*  
*Coming into force* - - *13th April 1995*

Whereas a draft of these Regulations was laid before Parliament in accordance with the provisions of sections 4(12) and 7(5) of the Social Security (Incapacity for Work) Act 1994<sup>M1</sup> and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 4, 7 and 12(1) of the Social Security (Incapacity for Work) Act 1994<sup>M2</sup> and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of those enactments<sup>M3</sup>, hereby makes the following Regulations:

**Modifications etc. (not altering text)**

- C1** [Instrument excluded \(1.10.2010\) by Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No.2\) Regulations 2010 \(S.I. 2010/1907\), regs. 1\(2\), 22\(e\) \(with reg. 3\)](#)

**Marginal Citations**

- M1** [1994 c. 18.](#)  
**M2** [Sections 4\(2\)](#) and [7\(2\)](#) are cited because of the meaning ascribed to the word "prescribed".  
**M3** See section 173(5)(a) of the Social Security Administration Act 1992 (c. 5.). This provides that regulations made before the end of six 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.

## PART I

### INTRODUCTION

#### Citation, commencement and interpretation

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

(2) In these Regulations—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992 <sup>M4</sup>;

“the 1994 Act” means the Social Security (Incapacity for Work) Act 1994 <sup>M5</sup>;

“the Administration Act” means the Social Security Administration Act 1992 <sup>M6</sup>;

“the appointed day” means 13th April 1995;

“the Increases for Dependants Regulations” means the Social Security (Incapacity Benefit—Increases for Dependants) Regulations 1994 <sup>M7</sup>;

[<sup>F1</sup>“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995;]

“the Unemployment, Sickness and Invalidity Benefit Regulations” means the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 <sup>M8</sup>.

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to the regulation bearing that number in these Regulations;

(b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation;

(c) in a regulation to a numbered Part is to the Part bearing that number in these Regulations.

#### Textual Amendments

**F1** Words in [reg. 1\(2\)](#) substituted (6.4.2010) by [Social Security \(Equalisation of State Pension Age\) Regulations 2009 \(S.I. 2009/1488\)](#), [regs. 1, 8\(2\)](#)

#### Marginal Citations

**M4** 1992 c. 4.

**M5** 1994 c. 18.

**M6** 1992 c. 5.

**M7** S.I. 1994/2945.

**M8** S.I. 1983/1598; relevant amending instruments are [S.I. 1986/484](#), [1989/872](#) and [1994/1107](#).

## 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 <sup>M9</sup>.

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#### **Marginal Citations**

**M9** 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.

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**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) <sup>M10</sup> 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.

**Marginal Citations**

**M10** [S. I. 1987/1968](#); the relevant amending instruments are [S.I. 1988/522](#), 1989/1686, 1991/2741 and 2284, 1993/2113 and 1994/2943.

**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) <sup>M11</sup> 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.

**Marginal Citations**

**M11** [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 \(S.I. 1987/1968\)](#).

**Persons deemed to be incapable of work**

<sup>F27</sup> .....

**Textual Amendments**

**F2** [Reg. 7](#) revoked with transitional provisions (8.4.2002) by [Social Security \(Incapacity\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/491\)](#), regs. 1(1)(b), **5** (with reg. 6(2))

**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>M12</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.

#### Marginal Citations

**M12** [S.I. 1987/1986](#); relevant amending instruments are [S.I. 1992/247](#) and 1993/1113.

#### 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.

### PART III

#### PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT

#### Transitional awards of short-term incapacity benefit

**11.—(1)** Where a person is entitled to sickness benefit immediately before the appointed day, that award of sickness benefit shall have effect on or after the appointed day as if it were an award of short-term incapacity benefit; and such an award shall be referred to in these Regulations as a transitional award of short-term incapacity benefit.

(2) A person shall cease to be entitled to a transitional award of short-term incapacity benefit under paragraph (1)—

- (a) when the period of incapacity for work comes to an end; or
- (b) after 364 days of entitlement to short-term incapacity benefit in a period of incapacity for work; or
- (c) if he was entitled to sickness benefit under section 102 of the 1992 Act (sickness benefit in respect of an industrial injury) immediately before the appointed day, when the incapacity for work is no longer a result of a personal injury of the kind mentioned in section 94(1) of the 1992 Act,

whichever first occurs.

(3) Subject to the provisions in Part VI, a person's entitlement to a transitional award of short-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work) <sup>M13</sup>.

(4) [F<sup>3</sup>Subject to paragraph (5), where] a person ceases by virtue of paragraph (2)(b) to be entitled to a transitional award of short-term incapacity benefit he is, subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work), entitled to long-

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term incapacity benefit in the same period of incapacity for work in which he is not over pensionable age.

[<sup>F4</sup>(5) Where paragraph (4) applies to a person whose transitional award of short-term incapacity benefit was in respect of a personal injury of a kind mentioned in section 94(1) of the 1992 Act, he shall be entitled to the long-term incapacity benefit only if his incapacity for work continues to result from that personal injury.]

#### Textual Amendments

- F3** Words in [reg. 11\(4\)](#) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(2)(a)**
- F4** [Reg. 11\(5\)](#) inserted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(2)(b)**

#### Marginal Citations

- M13** Part XIA was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

### Special provision for persons entitled to short-term incapacity benefit on termination of employment after a period of entitlement to disability working allowance

**12.**—(1) Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(5) of the 1992 Act <sup>M14</sup> and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied;
- (b) in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act <sup>M15</sup> together with any increase under section 86A of that Act (increase for adult dependants) <sup>M16</sup> equals or exceeds that rate.

#### Marginal Citations

- M14** [Section 30C\(5\)](#) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.
- M15** [Section 30B](#) was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.
- M16** [Section 86A](#) was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

### Special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work

**13.**—(1) Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(6) of the 1992 Act <sup>M17</sup> and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied;
  - (b) in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act (increase for adult dependants) equals or exceeds that rate.
- (2) Where a person—
- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of not more than 57 days immediately after the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations (days when a person is attending a training course not to be treated as days of incapacity for work) <sup>M18</sup>; and
  - (b) had been entitled to sickness benefit in a period of interruption of employment [<sup>F5</sup>occurring in whole or in part in a period] not exceeding 57 days prior to the first day of attendance on the training course; and
  - (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course he becomes entitled to incapacity benefit by virtue of sections 30A, 40 or 41 of the 1992 Act <sup>M19</sup>; and
  - (d) the rate of short-term incapacity benefit is less than the rate at which a transitional award of short-term incapacity benefit would have been payable had the period of entitlement to sickness benefit referred to in sub-paragraph (b) been running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied, and in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purpose of paragraph (2), days of attendance on a training course referred to in that paragraph shall be treated as days of incapacity for work.

#### Textual Amendments

- F5** Words in [reg. 13\(2\)\(b\)](#) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), [regs. 1\(2\), 3\(2\)](#)

#### Marginal Citations

- M17** Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.
- M18** [S. I. 1983/1598](#); regulation 7(1)(f) was amended by the [Employment Act 1989 \(c.38\)](#), [Schedule 5 paragraphs 1](#) and 4 and [S.I. 1991/387](#).
- M19** Section 30A was inserted into the Social Security Contributions and Benefits Act 1992 by section 1(1) of the Social Security (Incapacity for Work) Act 1994. Sections 40 and 41 of the Social Security Contributions and Benefits Act 1992 were amended by section 11 of, Schedule 1, paragraphs 9 and 10 to, the Social Security (Incapacity for Work) Act 1994.

### Contribution conditions of short-term incapacity benefit in respect of an industrial injury

**14.—(1)** Where a person was entitled to sickness benefit under section 102 of the 1992 Act (sickness benefit in respect of industrial injury) immediately before the appointed day, the contribution conditions as specified in Schedule 3, Part I, paragraph 2 of the 1992 Act shall be taken to be satisfied—

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- (a) for the purposes of entitlement to a transitional award of the higher rate of short-term incapacity benefit in respect of that industrial injury;
  - (b) for the purposes of entitlement to the lower or higher rate of short-term incapacity benefit where—
    - (i) he ceased to be entitled to a transitional award as a consequence of regulation 11(2)(c); and
    - (ii) no more than 57 days after he ceased to be so entitled, he became incapable of work as a result of the personal injury in respect of which the transitional award referred to in head (i) above was payable;
  - (c) for the purposes of entitlement to short-term incapacity benefit by virtue of section 30C(5) or 30C(6) of the 1992 Act <sup>M20</sup> in a case where he becomes incapable for work as a result of the personal injury in respect of which a transitional award of incapacity benefit was made.
- (2) Where a person is entitled to incapacity benefit by virtue of paragraph (1)(b), the rate at which incapacity benefit is payable shall be the rate at which a transitional award of short-term incapacity benefit would have been payable had he been entitled to a transitional award of short-term incapacity benefit; and these Regulations shall apply as if the award of incapacity benefit were a transitional award of short-term incapacity benefit.

#### Marginal Citations

**M20** Section 30C was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

### Increase of rate of a transitional award of short-term incapacity benefit for adult dependants

**15.**—(1) Subject to paragraph (7), where at any time during a period of 56 days immediately before the appointed day—

- (a) an increase of sickness benefit under Part IV of the 1992 Act was payable to a person for a spouse who was an adult dependant; and
- (b) on the appointed day he becomes entitled to a transitional award of short-term incapacity benefit under regulation 11,

an amount equal to that increase shall be payable.

(2) Where, as a consequence of a review under section 150 of the Administration Act in the tax year 1994–1995, the amounts specified in column (3) of paragraph 1A of Part IV of Schedule 4 to the 1992 Act <sup>M21</sup> are increased, the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 1A of Part IV of Schedule 4 to the 1992 Act.

(3) Subject to the following provisions, an increase under paragraph (1) shall continue to be payable provided that—

- (a) the spouse is residing with the beneficiary; or
- (b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) The provisions in Part I (general) and Part III (adults), save for regulation 9(1)(a) and (b) of that Part, of the Increases for Dependants Regulations shall apply to an increase under paragraph (1) as they apply to an increase made by virtue of section 86A of that Act <sup>M22</sup>.



(5) A person shall cease to be entitled to an increase under paragraph (1) when no increase of sickness benefit or short-term incapacity benefit has been paid or payable for a period of at least 57 continuous days.

(6) In calculating the period referred to in paragraph (5) the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6) of the 1992 Act <sup>M23</sup> or regulation 13(2) shall not be taken into account.

(7) Where a person is entitled to an increase under paragraph (1) and section 30B(4) of the 1992 Act applies to him the amount of the increase shall be equal to the rate specified in Schedule 4, Part IV, paragraph 2, column (3) of the 1992 Act.

(8) In a case where paragraph (7) applied, the increase shall continue to be payable if, when the transitional award of short-term incapacity benefit is terminated, he immediately becomes entitled to long-term incapacity benefit under section 30A(5) of that Act and he continues to satisfy the conditions in section 30B(4)(a) and (b); and this regulation shall continue to apply to that increase.

(9) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increases for Dependants Regulations.

#### Marginal Citations

- M21** Paragraph 1A of Part IV of Schedule 4 was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(6) of the Social Security (Incapacity for Work) Act 1994.
- M22** Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.
- M23** Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

#### Transitional provision for the treatment of earnings in respect of increases of short-term incapacity benefit for dependants

- (a) (a) on or after the appointed day no increase of short-term incapacity benefit is payable for—
- (i) an adult dependant as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependants) of the Increases for Dependants Regulations; or
  - (ii) a child dependant as a consequence of section 80(3) and (4) of the 1992 Act and regulation 5 of the Increases for Dependants Regulations; and
- (b) the earnings which caused there to be no payment of an increase in paragraph (a) had already resulted in no payment of an increase before the appointed day,

a payment of an increase shall be made as if the provisions in the 1992 Act in force immediately before the appointed day continued to have effect in respect of those earnings and the 1994 Act had not been enacted and regulations 5 and 10 of the Increases for Dependants Regulations had not come into force.

## PART IV

### PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM INVALIDITY BENEFIT

#### Transitional awards of long-term incapacity benefit

**17.**—(1) Where a person is entitled to invalidity benefit immediately before the appointed day, that award of invalidity benefit shall have effect on or after the appointed day as if it were an award of long-term incapacity benefit; and such an award shall be referred to in these Regulations as a transitional award of long-term incapacity benefit.

(2) Subject to the provisions in Part VI, a person's entitlement to a transitional award of long-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work) <sup>M24</sup>.

(3) A person who reaches pensionable age before the appointed day and who is entitled to a transitional award of long-term incapacity benefit under paragraph (1) shall continue to be entitled to that award on any day that he is incapable of work as determined in accordance with Part XIIA of the 1992 Act for as long as he is not more than 5 years over pensionable age<sup>F6</sup> or until the first day on which he is entitled to retirement pension, whichever date is the earlier].

(4) Where a person reaches pensionable age on or after the appointed day, entitlement to a transitional award of long-term incapacity benefit shall terminate on his attaining pensionable age.

#### Textual Amendments

**F6** Words in reg. 17(3) inserted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(3)**

#### Marginal Citations

**M24** Part XIIA was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

#### <sup>F7</sup> Awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link

**17A.** Where a person had been entitled to invalidity benefit in a period of interruption of employment occurring in whole or in part in a period not exceeding 57 days immediately before the appointed day and becomes entitled to an award of incapacity benefit 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, that award shall have effect as if it were an award of long-term incapacity benefit.]

#### Textual Amendments

**F7** Reg. 17A inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(3)**

## **[<sup>F8</sup>Calculating periods of incapacity for work for welfare to work beneficiaries in long-term incapacity benefit transitional cases**

**17B.** For the purposes of transitional cases, where a person, to whom regulation 17(1) (transitional awards of long-term incapacity benefit) or regulation 17A (awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link) applies, has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 to have become a welfare to work beneficiary, section 30C(1) (c) of the 1992 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 [<sup>F9</sup>104 weeks].]

### **Textual Amendments**

- F8** Reg. 17B inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(2)**
- F9** Words in [reg. 17B](#) substituted (9.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **11(2)**

## **Rate of long-term incapacity benefit in transitional cases**

**18.**—(1) Subject to paragraph (7), in transitional cases, the weekly rate of long-term incapacity benefit shall consist of—

- (a) a basic rate of an amount equal to the rate of long-term incapacity benefit specified in Schedule 4, Part I, paragraph 2A, of the 1992 Act<sup>M25</sup>;
  - (b) where an additional pension was paid or payable with invalidity benefit immediately before the appointed day, an additional rate of an amount equal to the rate paid or payable as an additional pension with invalidity benefit immediately before the appointed day; and that amount shall be referred to as the additional rate;
  - (c) where an invalidity allowance was payable [<sup>F10</sup>pursuant to subsection (3) of section 34] of the 1992 Act immediately before the appointed day, an amount equal to the appropriate rate specified in paragraph (2); and that amount shall be referred to as a transitional invalidity allowance.
- (2) The appropriate rate referred to in paragraph (1)(c) is—
- (a) where the higher rate of invalidity allowance was payable immediately before the appointed day, [<sup>F11</sup>£26.60]
  - (b) where the middle rate of invalidity allowance was payable immediately before the appointed day, [<sup>F12</sup>£17.10]
  - (c) where the lower rate of invalidity allowance was payable immediately before the appointed day, [<sup>F13</sup>£8.55]

(3) The transitional invalidity allowance shall be up-rated in accordance with the provisions of Part X of the Administration Act (review and alteration) as if that allowance were a sum specified in section 150(1)(a)(i), (2)(a) and (3)(a) of that Act.

(4) In a transitional case, where for any period a person is entitled to an award of long-term incapacity benefit which includes the additional rate and a transitional invalidity allowance, for that period the relevant amount shall be deducted from the appropriate weekly rate of the transitional invalidity allowance <sup>F14</sup>....

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(5) In paragraph (4) “the relevant amount” means an amount equal to the additional rate reduced by the amount of any reduction in the weekly rate of incapacity benefit made by virtue of regulation 22.

(6) Where the rate of long-term incapacity benefit includes a transitional invalidity allowance no increase shall become payable by virtue of regulations made under section 30B(7) of the 1992 Act<sup>M26</sup>.

(7) In a transitional case where a person attained pensionable age before the appointed day and is not more than 5 years over that age, he shall continue to be entitled to long-term incapacity benefit until he reaches 5 years over pensionable age [<sup>F15</sup>or until the first day on which he is entitled to retirement pension, whichever date is the earlier,] payable at the rate at which the basic pension referred to in section 44(4) of the 1992 Act<sup>M27</sup> is payable.

(8) In determining the rate of long-term incapacity benefit in a transitional case where paragraph (7) applies, any increase of the following descriptions shall be disregarded—

- (a) if he is also entitled to a transitional invalidity allowance under paragraph (1)(c), any increase under section 47(1) or 50(2) of the 1992 Act<sup>M28</sup>;
- (b) any increase (for married women) under section 53(2) of, or (for deferred retirement) under Schedule 5 to, the 1992 Act;
- (c) any increase (for dependants) under section 80, 83 or 85 of the 1992 Act; and
- (d) any increase (for Category A or Category B pensioners) under section 150 of the Administration Act (annual up-rating) of the sums mentioned in subsection (1)(e) of that section.

[<sup>F16</sup>(9) For the purposes of Part IV a “transitional case” means a case where a person is entitled to an award of long-term incapacity benefit by virtue of regulation 17 or 17A.]

#### Textual Amendments

- F10** Words in reg. 18(1)(c) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(4)(a)**
- F11** Sum in [Reg. 18\(2\)\(a\)](#) substituted (coming into force in accordance with art. 1(4) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2023 \(S.I. 2023/316\)](#), arts. 1(3)(h), **18(1)(a)** (with art. 18(2))
- F12** Sum in [Reg. 18\(2\)\(b\)](#) substituted (coming into force in accordance with art. 1(4) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2023 \(S.I. 2023/316\)](#), arts. 1(3)(h), **18(1)(b)** (with art. 18(2))
- F13** Sum in [Reg. 18\(2\)\(c\)](#) substituted (coming into force in accordance with art. 1(4) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2023 \(S.I. 2023/316\)](#), arts. 1(3)(h), **18(1)(c)** (with art. 18(2))
- F14** Word in reg. 18(4) omitted (6.1.1997) by virtue of [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(4)(b)**
- F15** Words in reg. 18(7) inserted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(4)(c)**
- F16** [Reg. 18\(9\)](#) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(4)**

#### Marginal Citations

- M25** Paragraph 2A in Part I of Schedule 4 was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(2) of the Social Security (Incapacity for Work) Act 1994.
- M26** Section 30B(7) was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.

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**M27** Section 44(4) of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, and Schedule 1, paragraph 11 to, the Social Security (Incapacity for Work) Act 1994.

**M28** Section 47 of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, and paragraph 13 of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994.

### Special provisions for persons entitled to long-term incapacity benefit on termination of a period of entitlement to disability working allowance

**19.**—(1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to incapacity benefit by virtue of section 30C(5) of the 1992 Act <sup>M29</sup> and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act <sup>M30</sup> together with any increase under section 86A of that Act (increase for adult dependants) <sup>M31</sup> equals or exceeds that rate.

(2) Where a person—

- (a) who was entitled to disability working allowance by virtue of section 129 of the 1992 Act before the appointed day or to disability working allowance at any time in a period of not more than 56 days beginning on or after the appointed day, becomes entitled to incapacity benefit; and
- (b) would have become entitled to invalidity benefit by virtue of section 33(7) or section 42 of the 1992 Act had the 1994 Act not come into force; and
- (c) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the days of entitlement to invalidity benefit in the period of interruption of employment which arose immediately before the period of entitlement to disability working allowance been days of entitlement to invalidity benefit in a period of interruption of employment running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purposes of paragraph (2), the days of entitlement to disability working allowance referred to in that paragraph shall be treated as days of incapacity for work.

#### Marginal Citations

**M29** Section 30C(5) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

**M30** Section 30B was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.

**M31** Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

### Special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work

**20.**—(1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to long-term incapacity benefit by virtue of section 30C(6) of the 1992 Act <sup>M32</sup> and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act <sup>M33</sup> together with any increase under section 86A of that Act (increase for adult dependants) <sup>M34</sup> equals or exceeds that rate.

(2) Where a person—

- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of not more than 57 days immediately after the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations (days when a person is attending a training course not to be treated as days of incapacity for work) <sup>M35</sup>; and
- (b) had been entitled to invalidity benefit in a period of interruption of employment [<sup>F17</sup> occurring in whole or in part in a period] not exceeding 57 days prior to the first day of attendance on the training course; and
- (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course becomes entitled to incapacity benefit by virtue of sections 30A, 40 or 41 of the 1992 Act <sup>M36</sup>; and
- (d) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the period of entitlement to invalidity benefit referred to in sub-paragraph (b) been running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purpose of paragraph (2), the days referred to as days of attendance on a training course in that paragraph shall be treated as days of incapacity for work.

#### Textual Amendments

- F17** Words in reg. 20(2)(b) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), 3(5)

#### Marginal Citations

- M32** Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.
- M33** Section 30B was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.
- M34** Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

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**M35** S.I. 1983/1598; regulation 7(1)(f) was amended by the [Employment Act 1989 \(c.38\)](#), [Schedule 5 paragraphs 1](#) and 4 and [S.I. 1991/387](#).

**M36** Section 30A was inserted into the Social Security Contributions and Benefits Act 1992 by section 1(1) of the Social Security (Incapacity for Work) Act 1994. Sections 40 and 41 of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, paragraphs 8 and 9 of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994.

### **Special provisions for persons entitled to long-term incapacity benefit in respect of an industrial injury**

**21.**—(1) Subject to paragraph (2), a person entitled to a transitional award of long-term incapacity benefit in respect of a personal injury of a kind mentioned in section 94(1) of the 1992 Act shall cease to be so entitled when the incapacity for work is no longer as a result of that injury.

(2) Where a person's entitlement to a transitional award of long-term incapacity benefit ceases as a consequence of paragraph (1) and no more than 57 days after entitlement to that award ceases he becomes incapable for work as a result of the same personal injury in respect of which the transitional award of long-term incapacity benefit was payable, he shall be entitled to benefit at the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be so entitled; and these Regulations shall apply as if the award of incapacity benefit were a transitional award of long-term incapacity benefit.

### **Effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term incapacity benefit**

**22.**—(1) Where a person who is a transitional case is entitled to both—

- (a) an award of long-term incapacity benefit which includes the additional rate; and
- (b) to one or more guaranteed minimum pensions, and had been entitled to an invalidity pension under section 41 of the 1992 Act immediately before the appointed day, the weekly rate of the award of long-term incapacity benefit shall be reduced by an amount equal—
  - (i) to the additional rate; or
  - (ii) to the weekly rate of the pension mentioned in paragraph (b) or if there is more than one such [<sup>F18</sup>guaranteed minimum pension], their aggregate weekly rates, whichever is less.

(2) Where a person is entitled to an award of long-term incapacity benefit which includes the additional rate and the transitional invalidity allowance, the weekly rate of that award shall be reduced by the relevant amount being deducted from the weekly rate of the transitional invalidity allowance and he shall be entitled to that allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(3) Where for any period a person is entitled to—

- (a) an award of long-term incapacity benefit which does not include the additional rate; and
- (b) one or more guaranteed minimum pensions,

the weekly rate of the award of long-term incapacity benefit shall be reduced by deducting the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions from the weekly rate of the transitional invalidity allowance and a person shall be entitled to that allowance only if there is a balance after deduction and, if there is a balance, at a weekly rate equal to it.

(4) Where for any period a person is entitled to—

- (a) an award of long-term incapacity benefit which includes the additional rate but does not include the transitional invalidity allowance; and

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- (b) one or more guaranteed minimum pensions; and
- (c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7 to the 1992 Act,

the relevant amount shall be deducted from the amount of the increase of unemployability supplement specified in Schedule 4, Part V, paragraph 6 to the 1992 Act, and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

- (5) Where for any period a person who is a transitional case is entitled to—
  - (a) an award of long-term incapacity benefit which does not include the additional rate; and
  - (b) one or more guaranteed minimum pensions; and
  - (c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7 to the 1992 Act,

the increase of the unemployability supplement shall be reduced by the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

(6) In this regulation “the relevant amount” means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and the additional rate reduced by—

- (a) the additional rate; or
- (b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension,

whichever is the less.

#### Textual Amendments

- F18** Words in reg. 22(1)(b)(ii) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(6)**

#### Increase of Category A retirement pension for incapacity

**23.**—<sup>[F19]</sup>(1) Where a person has been entitled to invalidity allowance or transitional invalidity allowance at any time during a period of 57 days before attaining pensionable age, sections 47 and 61 of the 1992 Act shall continue to have effect as though section 11 of, and paragraph 13 of Schedule 1 to, the 1994 Act had not come into force and as though any reference to invalidity allowance in section 47 were a reference to transitional invalidity allowance or invalidity allowance.

<sup>[F20]</sup>(2) In the case of a person who is a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995, the reference in paragraph (1) to a period of 57 days shall be treated as a reference to a period of <sup>[F21]</sup>104 weeks.]

#### Textual Amendments

- F19** Reg. 23(1): reg. 23 renumbered as reg. 23(1) (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(3)**
- F20** Reg. 23(2) inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(3)**
- F21** Words in reg. 23(2) substituted (9.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **11(3)**



### **Increase of rate of long-term incapacity benefit for dependants in transitional cases**

**24.**—(1) Subject to paragraphs (3), (4) and (5) and regulation 25, in a transitional case where at any time during a period of 56 days immediately before the appointed day—

- (a) an increase in the rate of invalidity benefit was paid by way of a concessionary payment to compensate for non-payment of an increase for a spouse who was an adult dependant under Part IV of the 1992 Act; or
- (b) an increase in the rate of invalidity benefit was payable for a spouse who was an adult dependant under Part IV of the 1992 Act,

an amount equal to that increase shall be payable.

(2) Where, as a consequence of a review under section 150 of the Administration Act in the tax year 1994–1995, the amounts specified in column (3) of paragraph 2 of Part IV of Schedule 4 to the 1992 Act<sup>M37</sup> are increased, the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 2 of Part IV of Schedule 4 to the 1992 Act.

(3) Except as provided for in regulation 25, an increase under paragraph (1) shall continue to be payable where—

- (a) the spouse is residing with the beneficiary; or
- (b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) Subject to regulations 25 and 26 and paragraph (5), the provisions in Part I (general) and Part III (adults), save for regulation 9(1)(a) and (b) of that Part, of the Increases for Dependants Regulations shall apply to the increase as if it were an increase under section 86A of the 1992 Act<sup>M38</sup>.

(5) Where an increase under paragraph (1) is paid or payable to a person over pensionable age, the provisions in regulation 13 of the Increases for Dependants Regulations (increase of short-term incapacity benefit for persons over pension age) shall apply to the increase of long-term incapacity benefit as if that increase were an increase of short-term incapacity benefit.

(6) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increases for Dependants Regulations.

(7) [<sup>F22</sup>Except in a case where paragraph (7A) applies, a person] shall cease to be entitled to an increase under paragraph (1) when either—

- (a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days;
- (b) no increase of invalidity benefit or long-term incapacity benefit is paid or payable for at least 57 continuous days in a period of incapacity for work.

[<sup>F23</sup>(7A) The exception referred to in paragraph (7) applies only if the person—

- (a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995; and
- (b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995.]

(8) In calculating the period referred to in paragraph (7), the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6) of the 1992 Act<sup>M39</sup> and regulation 19(2) shall not be taken into account.

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### Textual Amendments

- F22** Words in [reg. 24\(7\)](#) substituted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, [3\(4\)\(a\)](#)
- F23** [Reg. 24\(7A\)](#) inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, [3\(4\)\(b\)](#)

### Marginal Citations

- M37** Paragraph 2 of Part IV of Schedule 4 to the Social Security Contributions and Benefits Act 1992 was amended by section 2(6) of the Social Security (Incapacity for Work) Act 1994.
- M38** Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.
- M39** Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

### Further provisions for dependants in respect of the application of old saving provisions

**25.**—(1) In relation to transitional cases where the rate of incapacity benefit falls to be calculated by reference to the rate of dependency allowance paid or payable before the appointed day, the old saving provisions referred to in paragraph (2) shall continue to have effect subject to the following provisions of this regulation.

(2) The old saving provisions referred to in paragraph (1) are—

- (a) regulation 15 of the Social Security Benefit (Dependency) Regulations 1977 <sup>M40</sup>;
- (b) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations 1984 <sup>M41</sup>;
- (c) regulation 3 of the Social Security<sup>[F24Benefit]</sup> (Dependency) Amendment Regulations 1984 <sup>M42</sup>;
- (d) regulation 3 of the Social Security<sup>[F24Benefit]</sup> (Dependency) Amendment Regulations 1985 <sup>M43</sup>;
- (e) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989 <sup>M44</sup>;
- (f) regulation 4 of the Social Security<sup>[F24Benefit]</sup> (Dependency) Amendment Regulations 1992 <sup>M45</sup>; and
- (g) any administrative provision which before the appointed day enabled a concessionary payment to be made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of any one of the regulations referred to in sub-paragraphs (a) to (f) ceasing to apply to an increase due to attendance on a training course.

(3) <sup>[F25</sup>Except in a case where paragraph (3A) applies, the old saving provisions] referred to in paragraph (2) shall cease to have effect when—

- (a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days; or
- (b) no increase is paid for a dependant for a continuous period of at least 57 days in a period of incapacity for work; or
- (c) in a case where regulation 4 of the Social Security<sup>[F26Benefit]</sup> (Dependency) Amendment Regulations 1992 applies, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days; or

- (d) in a case where a concessionary payment was made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of regulation 4 of the Social Security<sup>[F26]</sup>Benefit] (Dependency) Amendment Regulations 1992 ceasing to apply due to attendance on a training course, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days.

<sup>[F27]</sup>(3A) The exception referred to in paragraph (3) applies only if the person—

- (a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995; and
- (b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995.]

(4) Regulation 4 of the Social Security<sup>[F28]</sup>Benefit] (Dependency) Amendment Regulations 1992 shall not apply in any week to a case where a dependant has earnings which exceed £81.50 per week.

(5) Where an increase is payable as a consequence of a concessionary payment made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of regulation 4 of the Social Security<sup>[F28]</sup>Benefit] (Dependency) Amendment Regulations 1992 ceasing to apply due to attendance on a training course, no payment shall be made in any week where a dependant has earnings which exceed £81.50 per week.

#### Textual Amendments

- F24** Word in reg. 25(2)(c)(d)(f) inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(7)**
- F25** Words in reg. 25(3) substituted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(5)(a)**
- F26** Word in reg. 25(3)(c)(d) inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(7)**
- F27** Reg. 25(3A) inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(5)(b)**
- F28** Word in reg. 25(4)(5) inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(7)**

#### Marginal Citations

- M40** S.I. 1977/343.
- M41** S.I. 1984/1696.
- M42** S.I. 1984/1698.
- M43** S.I. 1985/1190.
- M44** S.I. 1989/1690.
- M45** S.I. 1992/3041.

#### Transitional provision for the treatment of earnings in respect of increases of long-term incapacity benefit for dependants.

- (a) (a) on or after the appointed day—
- (i) no increase or a reduced amount of the rate of increase of long-term incapacity benefit is payable for an adult dependant as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependants) of the Increases for Dependants Regulations; or

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- (ii) no increase of long-term incapacity benefit is payable for a child dependant as a consequence of section 80(3) and (4) of the 1992 Act and regulation 5 (attribution of earnings) of the Increases for Dependants Regulations; and
- (b) in a case where the increase for an adult dependant is reduced, the amount of reduction would have been less had the 1994 Act and regulations 5 and 10 of the Increases for Dependants Regulations not come into force; and
- (c) the earnings which caused there to be no payment of an increase or a reduction of an increase in paragraph (a) had already resulted in no payment of or a reduced payment of an increase before the appointed day,

a payment of an increase shall be made as if the provisions in the 1992 Act in force immediately before the appointed day continued to have effect in respect of those earnings and the 1994 Act had not been enacted and regulations 5 and 10 of the Increases for Dependants Regulations had not come into force.

## PART V

### MISCELLANEOUS TRANSITIONAL PROVISIONS

#### **Transition from a six day benefit to a seven day benefit**

**27.** Where a payment of an award of sickness benefit, invalidity benefit or severe disablement allowance would have been made in respect of a six day period ending on—

- (i) 13 April 1995, had the 1994 Act not come into force, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of that day shall be 1/6th of the appropriate weekly rate of that benefit or allowance in force on the appointed day;
- (ii) 14 April 1995, had the 1994 Act not come into force, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of 13 April and 14 April 1995 shall, in respect of each such day, be 1/6th of the appropriate weekly rate of that benefit or allowance in force on the appointed day.

#### **Transitional provisions for an increase of severe disablement allowance for adult dependants**

**28.—**(1) Subject to paragraph (2), where an increase of severe disablement allowance is payable for an adult dependant at any time during a period of 56 days immediately before the appointed day by virtue of section 90 of the 1992 Act, that increase shall continue to be payable and the provisions in [<sup>F29</sup>regulation 24(2) to (7A)] shall apply to that increase as if that increase were an increase of long-term incapacity benefit in a transitional case.

(2) Where a person becomes entitled to severe disablement allowance by virtue of—

- (a) section 68(10) of the 1992 Act (treating days of entitlement to disability working allowance as having been days on which a person was both incapable for work and disabled); or
- (b) section 68(10A) of the 1992 Act (treating days engaged in training as having been days on which a person was both incapable for work and disabled)<sup>M46</sup>,

and an increase had been payable under section 90 of the 1992 Act or paragraph (1) when he was last entitled to that allowance, he shall be entitled to an amount equal to the amount of an increase payable under paragraph (1) if, by reason only of the fact that there is no child for whom he is entitled to an increase under section 80 of the 1992 Act, he would not be entitled to an increase for an adult

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dependant under the Increases for Dependants Regulations; and the amount payable shall be treated as if it were an increase under paragraph (1).

#### Textual Amendments

**F29** Words in reg. 28(1) substituted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **3(6)**

#### Marginal Citations

**M46** Section 68(10A) was inserted into the Social Security Contributions and Benefits Act 1992 by section 9(2) of the Social Security (Incapacity for Work) Act 1994.

### [<sup>F30</sup>Transitional provision for entitlement to severe disablement allowance where a person has been engaged in training for work

- 28A.** For the purposes of entitlement to severe disablement allowance where a person—
- (a) at any time in a period of not more than 57 days immediately before the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983; and
  - (b) was entitled to severe disablement allowance in a period of interruption of employment within a period not exceeding 57 days prior to the first day of attendance on the training course; and
  - (c) becomes incapable of work within a period of 57 days after the last day of attendance on a training course,

he shall be treated as incapable of work and disabled for the days falling within the periods referred to in paragraphs (a), (b) and (c) notwithstanding that he may have been capable of work on any of those days.]

#### Textual Amendments

**F30** [Reg. 28A](#) inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **3(8)**

## PART VI

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

#### Transitional awards of incapacity benefit

**29.** A person's entitlement to a transitional award of incapacity benefit shall, except as provided in regulation 31, be subject to him satisfying the tests of incapacity for work under Part XIIA of the 1992 Act <sup>M47</sup>.

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### Marginal Citations

**M47** Part XIIA was inserted into the Social Security Contributions and Benefits Act 1992 by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994.

### Transitional provision in respect of other benefits

**30.** A person's continued enjoyment on or after the appointed day of severe disablement allowance or any other advantage under any provision for the purposes of which Part XIIA of the 1992 Act applies shall, except as provided in regulation 31, be subject to satisfying the tests of incapacity for work under that Part of the 1992 Act.

### 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 [<sup>F31</sup>and he continues to be incapable of work on or after the appointed day, [<sup>F32</sup>the question of whether he is capable or incapable of work shall fall to be determined in accordance with the personal capability assessment], but] 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 [<sup>F33</sup>that assessment] until he has been assessed as to incapacity for work in accordance with regulations made under section 171C of the 1992 Act [<sup>F34</sup>(the personal capability assessment)]<sup>M48</sup> 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)<sup>M49</sup>.

(3) Subject to paragraph (4), a person who falls within one of the cases mentioned in paragraph (5) [<sup>F35</sup>shall be treated as being incapable of work in accordance with regulations made under section 171C of the 1992 Act (the personal capability assessment)].

(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 [<sup>F36</sup>(k)] 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 [<sup>F37</sup>incapable of work in accordance with the personal capability assessment] 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, [<sup>F38</sup>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
- (iii) is aged 58 or over on the appointed day;

(b) a person—

- (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<sup>[F39]</sup>and the spell<sup>[F40]</sup>or period] of incapacity for work which is running at the appointed day continues];
- (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<sup>M50</sup> (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) <sup>[F41]</sup>a person is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of them—
- (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;
- <sup>[F42]</sup>(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;]
- <sup>[F43]</sup>(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.]

- [<sup>F44</sup>(i) a person who was in receipt of a payment of an increase of disablement pension by virtue of section 104 of the 1992 Act and regulation 19 of the Social Security (General Benefit) Regulations 1982 (increase of disablement pension for constant attendance) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to the 1992 Act immediately before the appointed day and continues to be in receipt of such payment;
- (j) a person who was in receipt of a payment of constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 immediately before the appointed day and continues to be in receipt of such payment;
- (k) a person who was in receipt of a payment of an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983 immediately before the appointed day and continues to be in receipt of such payment.]
- [<sup>F45</sup>(6) In sub-paragraph (h) of paragraph (5), “medical evidence” means—
- (a) evidence from a doctor approved by the Secretary of State; and
- (b) evidence (if any) from any other doctor, or a hospital or similar institution,
- or such part of such evidence as constitutes the most reliable evidence available in the circumstances.]

#### Textual Amendments

- F31** Words in reg. 31(1) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207), regs. 1(1), **3(5)(a)**
- F32** Words in reg. 31(1) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **7(a)(i)**
- F33** Words in reg. 31(1) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **7(a)(ii)**
- F34** Words in reg. 31(1) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **7(a)(iii)**
- F35** Words in reg. 31(3) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **7(b)**
- F36** Word in reg. 31(4) substituted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **3(9)(a)**
- F37** Words in reg. 31(4) substituted (3.4.2000) by The Social Security (Incapacity) Miscellaneous Amendments Regulations 2000 (S.I. 2000/590), regs. 1(b), **2**
- F38** Words in reg. 31(5)(a)(ii) substituted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **3(9)(b)(i)**
- F39** Words in reg. 31(5)(c) inserted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **3(9)(b)(ii)**
- F40** Words in reg. 31(5)(c) inserted (5.10.1998) by The Social Security (Welfare to Work) Regulations 1998 (S.I. 1998/2231), regs. 1, **3(7)**
- F41** Words in reg. 31(5)(h) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207), regs. 1(1), **3(5)(b)(i)**
- F42** Reg. 31(5)(h)(vii) substituted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **3(9)(b)(iii)**
- F43** Reg. 31(5)(h)(viii) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207), regs. 1(1), **3(5)(b)(ii)**
- F44** Reg. 31(5)(i), Reg. 31(5)(j), Reg. 31(5)(k) inserted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **3(9)(b)(iv)**



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**F45** Reg. 31(6) inserted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **3(5)(c)**

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**Marginal Citations**

**M48** 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.

**M49** [S.I. 1976/615](#); relevant amending instruments are [S.I. 1982/699](#), 1987/409, 1991/2284, 1992/247 and 1994/2975.

**M50** [1948 c. 29](#); the relevant amendments to section 29 are in the Local Government Act 1972 section 195, Schedule 23 paragraph 25.

**Treatment of days of incapacity arising before the appointed day**

**32.** The days of incapacity for work before the appointed day and the days which are treated as days of incapacity for work in accordance with regulation 2 shall be taken into account for the purposes of calculating the days of incapacity referred to in section 171B(3) and (4) of the 1992 Act <sup>M51F46</sup>....

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**Textual Amendments**

**F46** Words in [reg. 32](#) omitted (3.4.2000) by virtue of [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **7(c)**

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**Marginal Citations**

**M51** Section 171B was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

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

Department of Social Security

*William Hague*  
Minister of State,

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## EXPLANATORY NOTE

(This note is not part of the Regulations)

This Instrument contains the first regulations made under section 4 and section 7 of the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the 1994 Act").

It is made before the end of the period of six months beginning with the coming into force of sections 4 and 7 of the 1994 Act. The regulations contained in this Instrument are accordingly exempt by section 173(5)(a) of the Social Security Administration Act 1992 (c.5), as amended by section 11(1) of, and paragraph 51 of Schedule 1 to the 1994 Act, from reference to the Social Security Advisory Committee and have not been so referred.

Part I of the Regulations relates to the citation, commencement and interpretation.

Part II contains the provisions common to the transition to incapacity benefit from sickness benefit and invalidity benefit. Regulations 2 to 4 enable days before 13 April 1995 to be taken into account for the purposes of incapacity benefit and to enable days of incapacity for work after the 13 April 1995 to form part of a period of incapacity for work beginning before the 13 April 1995. Regulations 5, 6 and 8 make provision for late claims for sickness benefit and invalidity benefit, interchange with other benefits and payments of transitional awards. Regulation 7 enables persons who were deemed to be incapable of work before 13 April 1995 to continue to be so deemed after 13 April 1995. Regulations 9 and 10 make provisions for the disqualification and suspension of payment of incapacity benefit.

Part III makes provision for the transition to incapacity benefit from sickness benefit. Regulation 11 provides for awards of sickness benefit to be treated as awards of short-term incapacity benefit. Regulations 12 and 13 enable awards of incapacity benefit to be paid at the transitional rate on termination of employment after a period of entitlement to disability working allowance or a period engaged in training for work in certain circumstances. Regulation 14 provides that where a person was entitled to sickness benefit in respect of an industrial injury, the contribution conditions shall be taken to be satisfied for the purpose of entitlement to short-term incapacity benefit. Regulation 15 provides for an increase in the rate of a transitional award of short-term incapacity benefit for dependants. Regulation 16 makes provision in respect of the treatment of earnings at the changeover period.

Part IV contains the provisions for the transition to incapacity benefit from invalidity benefit. Regulation 17 provides that awards from invalidity benefit shall be treated as awards of long-term incapacity benefit. Regulation 18 provides the rate at which long-term incapacity benefit shall be payable in transitional cases. Regulations 19 and 20 enable an award of incapacity benefit to be paid at the transitional rate on termination of a period of entitlement to disability working allowance or on termination of a period engaged in training for work in certain circumstances. Regulation 21 enables the transitional rate of long-term incapacity benefit to be paid where a person is incapacitated in respect of an industrial injury. Regulation 22 provides for the adjustment of benefit where a guaranteed minimum pension is in payment. Regulation 23 makes transitional provision for an increase of a Category A retirement pension for incapacity. Regulations 24 and 25 provide for the increase in the rate of long-term incapacity benefit in respect of dependants in transitional cases. Regulation 26 makes provision for the treatment of earnings at the changeover period.

Part V contains miscellaneous transitional provisions in respect of the rate of payment of incapacity benefit in the week that the benefit is introduced and for an increase of severe disablement allowance for dependants (regulations 27 and 28).

Part VI contains provisions for the transition to the new tests of incapacity for work. Regulations 29 and 30 provide for the new tests of incapacity for work to apply to existing cases where incapacity is in question. Regulation 31 makes provisions to apply the new tests to existing

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cases and provides for categories of persons to be exempt from the new all work test. Regulation 32 enables days of incapacity arising before the 13 April 1995 to be taken into account for the purposes of the new medical tests. These Regulations do not impose a charge on business.

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**Changes and effects yet to be applied to :**

- reg. 18(2)(a) sum substituted by [S.I. 2024/242 art. 17\(1\)\(a\)](#)
- reg. 18(2)(b) sum substituted by [S.I. 2024/242 art. 17\(1\)\(b\)](#)
- reg. 18(2)(c) sum substituted by [S.I. 2024/242 art. 17\(1\)\(c\)](#)