

**2002 No. 491**

**SOCIAL SECURITY**

**The Social Security (Incapacity) (Miscellaneous  
Amendments) Regulations 2002**

<i>Made</i> - - - - -	<i>5th March 2002</i>
<i>Laid before Parliament</i> - -	<i>12th March 2002</i>
<i>Coming into force</i>	
<i>for the purposes of regulation 4</i>	<i>5th April 2002</i>
<i>for all other purposes</i>	<i>8th April 2002</i>

The Secretary of State for Work and Pensions, in exercise of powers conferred by sections 171D, 171G(2) and 175(1) to (4) of the Social Security Contributions and Benefits Act 1992(a), section 4(1) and (6) of the Social Security (Incapacity for Work) Act 1994(b) and section 85(6) of the Welfare Reform and Pensions Act 1999(c), and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(d), hereby makes the following Regulations:-

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002 and shall come into force—

- (a) for the purposes of regulation 4, on 5th April 2002; and
- (b) for all other purposes, on 8th April 2002.

(2) In these Regulations “the principal Regulations” means the Social Security (Incapacity for Work) (General) Regulations 1995(e).

**Amendment of regulation 10A of the principal Regulations**

2. In regulation 10A of the principal Regulations (certain persons participating in approved work to be treated as incapable of work), in paragraph (4)—

- (a) in the definition of “approved work” for the words from “by the Employment” to the end there shall be substituted the words “with an employer in respect of him by an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose”; and
- (b) in the definition of “trial basis” for the words from “between” to the end there shall be substituted the words “between—

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(a) 1992 c. 4; section 171G(2) is cited for the meaning of “prescribed”; sections 171D to 171G were inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18); subsections (1) and (4) of section 175 were amended, and subsection (1A) was inserted, by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(b) 1994 c. 18.

(c) 1999 c. 30.

(d) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(e) S.I. 1995/311; regulation 10A was inserted by S.I. 2000/678.

- (a) the person;
  - (b) an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose; and
  - (c) an employer,
- in relation to the approved work.”.

### **Amendment of regulation 17 of the principal Regulations**

3. Subject to regulation 6(1) below, in regulation 17 of the principal Regulations (exempt work)—

- (a) in paragraph (1) for sub-paragraph (a) there shall be substituted the following sub-paragraph:—

“(a) work in respect of which the required notice is given, and—

- (i) in respect of which the earnings in any week do not exceed £20.00, or
- (ii) which is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution, or
- (iii) which is supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities, or
- (iv) to which paragraph (1A) below applies;”;

- (b) after paragraph (1) there shall be inserted the following paragraphs—

“(1A) This paragraph applies in the case of a person whose circumstances are specified—

- (a) in sub-paragraph (a) of paragraph (1B) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph;
- (b) in sub-paragraph (a) of paragraph (1C) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph;
- (c) in sub-paragraph (a) of paragraph (1D) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph.

(1B) For the purposes of paragraph (1A)(a) above—

- (a) the specified circumstances are where—
  - (i) no work to which paragraph (1A) applies has previously been undertaken by that person, or
  - (ii) since the beginning of the last period during which any work to which that paragraph applies was previously undertaken by him, the person has ceased to be entitled, throughout a period exceeding eight continuous weeks, to a relevant benefit;
- (b) the specified period is the period of 26 weeks beginning with the first day on which the work is undertaken.

(1C) For the purposes of paragraph (1A)(b) above—

- (a) the specified circumstances are where—
  - (i) work to which paragraph (1A) applies has previously been undertaken by that person during a period specified in paragraph (1B)(b) above, and
  - (ii) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b) below, he is likely to improve his capacity to engage in full-time work;
- (b) the specified period is the period of 26 weeks beginning immediately after the end of the period specified in paragraph (1B)(b) above.

(1D) For the purposes of paragraph (1A)(c) above—

- (a) the specified circumstances are where—
  - (i) work to which paragraph (1A) applies has previously been undertaken by that person,
  - (ii) not less than 52 weeks have elapsed since the end of the period specified in paragraph (1B)(b) or (1C)(b) above or in sub-paragraph (b) below during which such work was last undertaken by him,

- (iii) head (ii) of paragraph (1B)(a) above does not apply in his case, and
  - (iv) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b) below, he is likely to improve his capacity to engage in full-time work;
  - (b) the specified period is the period of 52 weeks which begins with the first day on which the work is undertaken.
- (1E) In this regulation—
- “appropriate evidence” means, in relation to any work—
- (a) evidence from an officer of, or person providing services to, the Secretary of State who is authorised by the Secretary of State for the purpose; and
  - (b) evidence (if any) from any other person (including the person undertaking the work),
- or such part of such evidence as constitutes the most reliable evidence available in the circumstances;
- “relevant benefit” means—
- (a) incapacity benefit, severe disablement allowance, income support, housing benefit or council tax benefit under the Contributions and Benefits Act; or
  - (b) credits under regulations under section 22(5) of that Act,
- in connection with the entitlement to which the question of the person’s capacity or incapacity for work arises under that Act;
- “the required notice” means, in relation to work referred to in any of heads (i) to (iv) of paragraph (1)(a), notice to the effect that the person is undertaking, or is about to undertake the work, given in writing to the Secretary of State by that person or another person acting on his behalf—
- (a) in the case of work referred to in paragraph (1)(a)(i) to (iii), at any time before the person ceases to undertake the work;
  - (b) in the case of work referred to in paragraph (1)(a)(iv), no later than the end of the period of 42 days which begins with the day on which the work begins;
- “voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.”; and
- (c) in paragraph (2)—
    - (i) in sub-paragraph (a) for the words “paragraph (1)(a)” there shall be substituted the words “paragraph (1)(a)(ii) to (iv)”, and
    - (ii) in sub-paragraph (b) for the words “paragraph (1)(a)(i)” there shall be substituted the words “paragraph (1)(a)(iv)”.

**Amendment of regulation 19 of the Social Security (Incapacity Benefit) Regulations 1994**

**4.** In regulation 19 of the Social Security (Incapacity Benefit) Regulations 1994(a) (persons formerly entitled to severe disablement allowance), for the words “immediately before 6th April 2001” (in both places where those words appear) there shall be substituted the words “on 6th April 2001”.

**Revocation**

**5.** Subject to regulation 6(2) below, regulation 7 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(b) (persons deemed to be incapable of work) is hereby revoked.

**Transitional provisions**

**6.—(1)** Where, at any time during the pre-commencement period, a person was undertaking work of a kind described in regulation 17(1)(a) of the principal Regulations as then in force (work undertaken on medical advice), that regulation 17 shall, until the end of the day specified in paragraph (3) below, continue to apply in his case as if regulation 3 of these Regulations had not come into force.

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(a) S.I. 1994/2946; regulation 19 was inserted by S.I. 2000/3120.  
 (b) S.I. 1995/310.

(2) Where, at any time during the pre-commencement period, a person was, by virtue of regulation 7(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995, deemed to be incapable of work notwithstanding that he was undertaking work for more than 16 hours in any week, that regulation 7 shall, until the end of the day specified in paragraph (3) below, continue to apply in his case as if regulation 5 of these Regulations had not come into force.

(3) The day referred to in paragraphs (1) and (2) above is—

- (a) 6th April 2003;
- (b) where no work of a kind referred to in paragraph (1) or (2) above is undertaken by that person at any time during a period of 57 continuous days, the day which is the last day of that period; or
- (c) the day on which the period of incapacity for work which, on the day on which these Regulations come into force, has effect in relation to that person comes to an end,

whichever first occurs.

(4) In this regulation—

“period of incapacity for work” is to be construed in accordance with section 30C(1)(b) and (c) of the Social Security Contributions and Benefits Act 1992(a); and

“pre-commencement period” means the period which began 56 days before the day on which these Regulations come into force and ended on the day preceding that day.

Signed by authority of the Secretary of State  
for Work and Pensions.

5th March 2002

*N. Brown*  
Minister of State,  
Department for Work and Pensions

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(a) 1992 c. 4. Section 30C was inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the Social Security (Incapacity for Work) (General) Regulations 1995 (“the principal Regulations”) as they relate to the circumstances in which a person is to be treated as capable of work for the purposes of entitlement to certain social security benefits, and make miscellaneous amendments in other instruments relating to incapacity benefit.

Regulation 2 amends regulation 10A of the principal Regulations to substitute references to officers of, and persons providing services to, the Secretary of State in place of references to the Employment Service of the Department of Employment.

Regulation 3 amends regulation 17 of the principal Regulations in connection with the categories of work which may be undertaken by a person without his being treated (under regulation 16 of those Regulations) as being capable of work. In particular, the requirement that some categories of work may be undertaken only on medical advice has been replaced with a requirement that notice must be given to the Secretary of State that the work is being done.

Changes have also been made in those categories of work, by the substitution of work which gives rise to earnings of no more than £20 a week; work under supervision; and work during a maximum period of 26 weeks or (where beneficial to the person’s capacity for future full-time employment) 52 weeks.

Regulation 4 corrects a reference in the Social Security (Incapacity Benefit) Regulations 1994 as they relate to persons aged less than 20 on 6th April 2001 who have been in receipt of severe disablement allowance.

Regulation 5 revokes regulation 7 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 which provided for a person to be deemed to be incapable of work notwithstanding that he was undertaking specified work for more than 16 hours in any week.

Regulation 6 makes transitional provision, in connection with the amendments made by regulation 3 and the revocation made by regulation 5, in relation to persons who, shortly before these Regulations come into force, are not regarded as capable of work by virtue of the provisions which are now to be amended or revoked.

These Regulations impose no costs on business.





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