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STATUTORY INSTRUMENTS

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**2006 No. 757**

**SOCIAL SECURITY**

**The Social Security (Incapacity for Work) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>14th March 2006</i>
<i>Laid before Parliament</i>		<i>20th March 2006</i>
<i>Coming into force</i>	- -	<i>10th April 2006</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 171D and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1).

In accordance with section 172(1) of the Social Security Administration Act 1992(2) he has referred the proposals to make these Regulations to the Social Security Advisory Committee(3).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Incapacity for Work) Amendment Regulations 2006 and shall come into force on 10th April 2006.

(2) In these Regulations “the principal Regulations” means the Social Security (Incapacity for Work) (General) Regulations 1995(4).

**Amendment of regulation 13A of the principal Regulations**

2. In regulation 13A of the principal Regulations (welfare to work beneficiary)—

(a) in paragraph (1)(d)(i)—

(i) for “within a period of a” substitute “not later than one”, and

(ii) after “he” insert “expects to be, or (as the case may be)”;

(b) in paragraph (4) for the definition of “immediate past period of incapacity for work” substitute—

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(1) 1992 c. 4. Section 171D was inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18). Section 175(1) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(2) 1992 c. 5.

(3) See section 170 of the Social Security Administration Act 1992.

(4) S.I.1995/311, relevant amending instruments are S.I. 1995/987, 1996/3207, 1998/2231, 1999/2860, 3109, 2000/678, 2002/491, 2005/2446.

““immediate past period of incapacity for work” means—

- (i) a period of incapacity for work under section 30C(1) of the Contributions and Benefits Act,
- (ii) a period of incapacity for work under section 152 of the Contributions and Benefits Act, or
- (iii) a term composed of a period of incapacity for work under section 30C(1) and a period of incapacity for work under section 152 and includes any two such periods of incapacity for work which are separated by a period of not more than 8 weeks.”.

### **Amendment of regulation 16 of the principal Regulations**

**3.** For regulation 16 of the principal Regulations (person who works to be treated as capable of work) substitute—

“**16.**—(1) A person shall be treated as capable of work on each day of any week during which he does work.

(2) Paragraph (1) applies even if—

- (a) it has been determined that he is, or is to be treated under any of regulations 10 to 15 or regulation 27 as, incapable of work, or
- (b) he meets the conditions set out in regulation 28(2) for treating a person as incapable of work in accordance with the personal capability assessment until a determination has been made in accordance with that assessment.

(3) Paragraph (1) does not apply to—

- (a) work as a councillor disregarded under section 171F of the Contributions and Benefits Act,
- (b) approved work under regulation 10A,
- (c) care of a relative or domestic tasks carried out in his own home,
- (d) any activity he undertakes during an emergency solely to protect another person or to prevent serious damage to property or livestock, or
- (e) any of the categories of work set out in regulation 17 (exempt work).

(4) This regulation is subject to regulation 13(3) (person receiving certain regular treatment).

(5) A person who does work to which this regulation applies in a week which is—

- (a) the week in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work in any period, or
- (b) the last week in any period in which he is incapable of work,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

(6) In this regulation—

“week” means a period of 7 days beginning with Sunday,

“work” means any work which a person does, whether or not he undertakes it in expectation of payment.”.

## Amendment of regulation 17 of the principal Regulations

### 4. For regulation 17 of the principal Regulations (exempt work) substitute—

“17.—(1) The categories of work referred to in regulation 16(3)(e) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed £81.00 and which—

(a) 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

(b) 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.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed £81.00 and which—

(a) is done during a 52 week period beginning on the first day on which the work is done, provided that—

(i) the person has not previously done specified work,

(ii) since the beginning of the last period of specified work, he has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks, or

(iii) not less than 52 weeks have elapsed since he previously did specified work;  
or

(b) is done by a person who is treated as incapable of work under—

(i) regulation 10 (persons with a severe condition treated as incapable of work),  
or

(ii) regulation 31(3) and (5)(c) to (k) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(5) (persons treated as incapable of work).

(5) Work done in the course of receiving assistance in pursuing self-employed earner’s employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973(6) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(7) (functions in relation to training for employment etc).

(6) Work done as a volunteer.

(7) Duties undertaken on not more than one day a week as—

(a) a member of the Disability Living Allowance Advisory Board, or

(b) a panel member with a disability qualification, as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(8), acting as a member of an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998(9).

(8) In this regulation—

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(5) S.I. 1995/310. Relevant amending instruments are S.I. 1995/987, 1996/3207, 1998/2231/1999/3109.

(6) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (C.19); section 29(4) and Schedule 7; Part I of the Employment Act 1989 (c. 38) and section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(7) 1990 c. 35; section 2 was amended by sections 47 and 51 of, and Schedule 10 to, the Trade Union Reform and Reform and Employment Rights Act 1993 and by S.I. 1999/1820.

(8) S.I. 1999/991, to which there are amendments not relevant to these Regulations.

(9) 1998 c. 14.

“less than 16 hours a week” means—

- (a) subject to paragraph (b) or (c), a combined total of less than 16 hours a week,
- (b) subject to paragraph (c), an average of less than 16 hours a week in the period which comprises that week and the 4 weeks preceding it, or
- (c) an average of less than 16 hours a week in the period of the cycle in which that week falls, where it is established that the work falls into a recognised cycle;

“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;

“specified work” means—

- (a) work done in accordance with paragraph (4)(a), or
- (b) work done in accordance with regulation 17(1A)(10) as then in force;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.”.

### **Transitional**

**5.—**(1) This regulation applies for the purposes of regulation 17(4)(a) of the principal Regulations as amended by these Regulations.

(2) This regulation applies where, before 10th April 2006, a person did work in a specified period in accordance with paragraph (1B)(b), (1C)(b) or (1D)(b) of regulation 17 as it then was of the principal Regulations and the specified period would have ended after 9th April 2006.

(3) Where the specified period is the one to which paragraphs (1B)(b) or (1C)(b) of regulation 17 applied, the 52 week period beginning on the first day on which the work is done referred to in regulation 17(4)(a) shall be treated as beginning on the first day of the period specified in regulation 17(1B)(b).

(4) Where the specified period is the one to which regulation 17(1D)(b) applied, the 52 week period beginning on the first day on which the work is done referred to in regulation 17(4)(a) shall be treated as beginning on the first day of the period specified in regulation 17(1D)(b).

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

*Anne McGuire*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

14th March 2006

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(10) Regulation 17(1A) was in force from 8th April 2002 to 9<sup>th</sup> April 2006.

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## EXPLANATORY NOTE

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

These Regulations amend the Social Security (Incapacity for Work) (General) Regulations 1995 (“the principal Regulations”).

Regulation 2, by amending the requirement to give notice and the definition of “immediate past period of incapacity for work”, enlarges the class of welfare to work beneficiaries to whom the linking term in regulation 13A of the principal Regulations applies.

Regulation 3 substitutes regulation 16 of the principal Regulations which describes persons who are treated as capable of work.

Regulation 4 substitutes regulation 17 of the principal Regulations which describes categories of exempt work.

Regulation 5 makes transitional provision in respect of work in a period which began before these Regulations come into force.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.