



Social Security (Incapacity for Work) Act 1994

1994 CHAPTER 18

Incapacity benefit

1 Incapacity benefit: entitlement.

- (1) In Part II of the ^{M1}Social Security Contributions and Benefits Act 1992 (contributory benefits), after section 30 insert—

“ Incapacity benefit

30A Incapacity benefit: entitlement.

- (1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.
- (2) The conditions are that—
- (a) he is under pensionable age on the day in question and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, Part I, paragraph 2; or
 - (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
 - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below, or
 - (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

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- (3) A person is not entitled to short-term incapacity benefit for the first 3 days of any period of incapacity for work.
 - (4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.
 - (5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.”.
- (2) In Schedule 3 to the ^{M2}Social Security Contributions and Benefits Act 1992 (contribution conditions for entitlement to benefit), in the heading before paragraph 2 and in sub-paragraph (1) of that paragraph for “sickness benefit” substitute “ short-term incapacity benefit ”.

Marginal Citations

- M1** 1992 c. 4.
M2 1992 c. 4.

2 Incapacity benefit: rate.

- (1) In Part II of the ^{M3}Social Security Contributions and Benefits Act 1992, after section 30A (inserted by section 1 above), insert—

“30B Incapacity benefit: rate.

- (1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.
- (2) Subject to the following provisions of this section, the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.

The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

- (3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.

But in determining that rate any increase of the following descriptions shall be disregarded—

- (a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
- (b) any increase (for dependants) under section 80, 83 or 85 below; and
- (c) 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.

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- (4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—
- (a) is terminally ill, or
 - (b) he is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.

For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

- (5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.
- (6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.
- (7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.

For this purpose “the qualifying date” means the first day of the period of incapacity for work or such earlier day as may be prescribed.”.

- (2) In Part I of Schedule 4 to the ^{M4}Social Security Contributions and Benefits Act 1992 (rates of benefit, &c.: contributory periodical benefits), for paragraph 2 (sickness benefit) substitute—

“2 Short-term incapacity benefit.

- (a) lower rate..... £43.45
- (b) higher rate..... £52.50”;

and after that paragraph insert—

“2A Long-term incapacity benefit.

..... £57.60”.

- (3) In section 150 of the ^{M5}Social Security Administration Act 1992 (annual up-rating of benefits), in subsection (1) (sums to be reviewed) after paragraph (a) insert—

“(aa) specified in regulations under section 30B(7) of that Act;”;

and in subsection (3) (sums subject to mandatory up-rating), after “(a)(ii) or (iii),” insert “(aa), ”.

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- (4) ^{F1}.....
- (5) After section 86 of the ^{M6}Social Security Contributions and Benefits Act 1992 insert—

“86A Incapacity benefit: increase for adult dependants.

- (1) The weekly rates of short-term and long-term incapacity benefit shall, in such circumstances as may be prescribed, be increased for adult dependants by the appropriate amount specified in relation to benefit of that description in Schedule 4, Part IV, column (3).
- (2) Regulations may provide that where the person in respect of whom an increase of benefit is claimed has earnings in excess of such amount as may be prescribed there shall be no increase of benefit under this section.”.
- (6) In Part IV of Schedule 4 to the ^{M7}Social Security Contributions and Benefits Act 1992 (rates of benefit, &c.: increases for dependants), after paragraph 1 insert—

“1A. Short-term incapacity benefit—

(a) where the beneficiary is under pensionable age	11.00	26.90
(b) where the beneficiary is over pensionable age	11.00	33.10”

and for paragraph 2 substitute—

“2. Long-term incapacity benefit 11.00 34.50”.

- (7) Any order under section 150 of the Social Security Administration Act 1992 (up-rating orders) made by the Secretary of State before the commencement of this section shall include provision—
- (a) making such increase (if any) in the sum specified in the provision inserted by subsection (2) above as the amount of short-term incapacity benefit at the higher rate as is necessary to make that sum equal to the higher rate or, if there is only one such rate, to the rate of statutory sick pay payable after the order comes into force; and
- (b) making such increases in the other sums specified in the provisions inserted by subsections (2) and (6) above in Schedule 4 to the Social Security Contributions and Benefits Act 1992 as would have been required if the provisions in question had been in force at all material times.

Textual Amendments

F1 S. 2(4) repealed (6.4.2003) by 2002 c. 21, ss. 60, 61, Sch. 6; S.I. 2003/962, art. 2(3)(e), Sch. 1 (subject to savings and transitional provisions in arts 3, 4)

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Commencement Information

- II** S. 2 wholly in force at 13.4.1995; s. 2 not in force at Royal Assent see s. 16(2)(3); s. 2(3)(7) in force at 18.11.1994 and s. 2(1)(5) in force for certain purposes at 18.11.1994 and in force insofar as not already in force at 13.4.1995 and s. 2(2)(4)(6) in force at 13.4.1995 by S.I. 1994/2926, art. 2(1)(2)(4)

Marginal Citations

- M3** 1992 c. 4.
M4 1992 c. 4.
M5 1992 c. 5.
M6 1992 c. 4.
M7 1992 c. 4.

3 Incapacity benefit: supplementary provisions.

- (1) In Part II of the ^{M8}Social Security Contributions and Benefits Act 1992, after section 30B (inserted by section 2(1) above) insert—

“30C Incapacity benefit: days and periods of incapacity for work.

- (1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—
- (a) a day of incapacity for work means a day on which a person is incapable of work;
 - (b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and
 - (c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.
- (2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.
- (3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.
- (4) The Secretary of State may by regulations provide—
- (a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
 - (b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.
- (5) Where—
- (a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged, and

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- (b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged, and
- (c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him, and
- (d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(6) Where—

- (a) a person becomes engaged in training for work, and
- (b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged, and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 or training of such other description as may be prescribed.

(7) For the purposes of this section “week” means any period of 7 days.

30D Incapacity benefit: construction of references to days of entitlement.

- (1) The following provisions have effect in calculating for the purposes of—
- (a) section 30A(4) above (length of entitlement to short-term incapacity benefit),
 - (b) section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate),
 - (c) section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness), and
 - (d) section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

the number of days for which a person has been entitled to short-term incapacity benefit.

(2) There shall be included—

- (a) the first three days of the period of incapacity for work, and

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- (b) in the case of a woman, any days for which she was entitled to maternity allowance.
- (3) There shall also be included such days as may be prescribed in respect of which a person was entitled to statutory sick pay, and on the first of which he satisfied the contribution conditions for short-term incapacity benefit.
- (4) There shall be excluded any days in respect of which a person was disqualified for receiving incapacity benefit.

30E Incapacity benefit: reduction for councillor's allowance.

- (1) Where the net amount of councillor's allowance to which a person is entitled in respect of any week exceeds such amount as may be prescribed, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
 - (2) In this section "councillor's allowance" means—
 - (a) in England or Wales, an allowance under or by virtue of—
 - (i) section 173 or 177 of the Local Government Act 1972, or
 - (ii) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989,other than such an allowance as is mentioned in section 173(4) of the Local Government Act 1972, or
 - (b) in Scotland, an allowance under or by virtue of section 49 of the Local Government (Scotland) Act 1973 or a scheme made by virtue of section 18 of the Local Government and Housing Act 1989;and where any such allowance is paid otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the allowance.
 - (3) In subsection (1) above "net amount", in relation to any councillor's allowance to which a person is entitled, means the aggregate amount of the councillor's allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question."
- (2) In Schedule 3 to the ^{M9}Social Security Contributions and Benefits Act 1992 (contribution conditions for entitlement to benefit), at the end of paragraph 2 (conditions for entitlement to short-term incapacity benefit) add—
- "(7) Where a person makes a claim for incapacity benefit and does not satisfy the second contribution condition (specified in sub-paragraph (3) above) and, in a later benefit year in which he would satisfy that condition had no such claim been made, he makes a further claim for incapacity benefit, the previous claim shall be disregarded."

Commencement Information

I2 S. 3 wholly in force at 13.4.1995; s. 3 not in force at Royal Assent see s. 16(2)(3); s. 3(1) in force at 18.11.1994 for certain purposes and insofar as not already in force at 13.4.1995 and s. 3(2) in force at 13.4.1995 by S.I. 1994/2926, art. 2(2)(4)

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Marginal Citations

M8 1992 c. 4.

M9 1992 c. 4.

4 Power to provide for the transition to incapacity benefit.

- (1) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient for the purposes of, or in connection with, the transition to incapacity benefit from sickness benefit and invalidity benefit.

Nothing in the following provisions of this section shall be construed as restricting the generality of that power.

- (2) In this section—

“commencement” means the commencement of sections 1 to 3 above and the consequent repeal of the provisions of the ^{M10}Social Security Contributions and Benefits Act 1992 relating to sickness benefit and invalidity benefit; and

“prescribed” means prescribed by regulations under this section.

- (3) Regulations under this section may provide that where a person was entitled to sickness benefit or invalidity benefit immediately before commencement any award of sickness benefit or invalidity benefit shall have effect after commencement, in accordance with the regulations and subject to such modifications as may be prescribed, as an award of incapacity benefit.

In the following provisions of this section such awards are referred to as “transitional awards” of incapacity benefit.

- (4) The reference in subsection (3) above to a person who was entitled to sickness benefit or invalidity benefit includes a person who would have been so entitled but for being disqualified by virtue of regulations under section 32 or 59 of the ^{M11}Social Security Contributions and Benefits Act 1992; and regulations under this section may provide that any such disqualification shall have such corresponding effect as may be prescribed in relation to the transitional award.

- (5) Regulations under this section may provide that a person’s entitlement under a transitional award of incapacity benefit shall, except as may be prescribed, be subject to satisfying the conditions of entitlement to incapacity benefit, and may in particular provide—

- (a) for the determination in accordance with Part XIIA of the ^{M12}Social Security Contributions and Benefits Act 1992 of the question whether that person is incapable of work; and
- (b) for the termination of his entitlement on his attaining pensionable age.

Excepted cases may be defined, in particular, by reference to the age of the person on commencement and whether he was receiving invalidity benefit on 1st December 1993 (the date of the announcement of the new scheme).

- (6) Regulations under this section may provide—

- (a) that days before commencement which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of incapacity for work for the purposes of incapacity benefit, and

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- (b) that days of entitlement to sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of entitlement to incapacity benefit.

Such provision may be made for the purposes of a transitional award of incapacity benefit or of enabling a claim for incapacity benefit to be made after commencement on the basis that a day of incapacity for work after commencement forms part of a period of incapacity for work beginning before commencement; and such cases are referred to in the following provisions of this section as “transitional cases”.

- (7) Regulations under this section may provide—
 - (a) for the rate of short-term incapacity benefit under a transitional award to be increased, in such cases as may be prescribed, as if that benefit were sickness benefit and the provisions of Part IV of the ^{M13}Social Security Contributions and Benefits Act 1992 (increases for dependants) continued to apply to that benefit; and
 - (b) for the payment in transitional cases, in such circumstances as may be prescribed, of long-term incapacity benefit to persons over pensionable age.
- (8) Regulations under this section may provide that in transitional cases the rate of short-term incapacity benefit at the higher rate or of long-term incapacity benefit shall be calculated—
 - (a) by reference to the rate of invalidity benefit, and of any relevant related allowance, addition or increase, paid or payable immediately before commencement, with such up-rating (if any) as may be provided for in accordance with the regulations (whether by applying the provisions of section 150 of the ^{M14}Social Security Administration Act 1992 or otherwise), and
 - (b) without any increase or addition which would otherwise be payable with incapacity benefit.
- (9) If regulations make provision of the kind mentioned in subsection (8) above they may also make with respect to any additional pension element of incapacity benefit provision corresponding to any of the provisions in force before commencement with respect to the additional pension element of invalidity pension.
- (10) Regulations under this section may provide, 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 commencement, that any old saving provisions shall have effect subject to the regulations or shall cease to have effect in accordance with the regulations.

For the purposes of this subsection—

“dependency allowance” means an allowance of the kind provided for in Part IV of the ^{M15}Social Security Contributions and Benefits Act 1992, and

“old saving provisions” means provisions of any description, including administrative provisions, in connection with a previous change affecting entitlement to or the amount of dependency allowances, preserving a person’s position in any respect.

- (11) Section 175(2) to (4) of the ^{M16}Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

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- (12) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.
- (13) A statutory instrument—
- (a) which contains (whether alone or with other provisions) any regulations made under this section, and
 - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

- M10** 1992 c. 4.
M11 1992 c. 4.
M12 1992 c. 4.
M13 1992 c. 4.
M14 1992 c. 5.
M15 1992 c. 4.
M16 1992 c. 4.

Changes to legislation:

There are currently no known outstanding effects for the Social Security (Incapacity for Work) Act 1994, Cross Heading: Incapacity benefit.