

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

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The section makes these provisions by inserting a new section 30DD into the part of the Contributions and Benefits Act that contains the rules for IB.

The *new section 30DD(1)* provides that where someone who is entitled to IB has income from a pension payment, which is defined by section 30DD(5) to include occupational pensions, personal pensions, and public service pensions, and that pension payment is in excess of a threshold amount of £85, provided by subsection (2), 50 per cent of the excess will be deducted when assessing IB. The *new section 30DD(2)* defines the amount of the threshold as £85 a week, or if the period in question is not a week the appropriate proportion as prescribed in regulations.

The *new section 30DD(3)* gives power to prescribe in regulations people who may not have their benefit reduced. It is intended to use this power to prescribe that people on IB who are entitled to the highest rate care component of Disability Living Allowance will not have their IB reduced.

The *new section 30DD(4)(a)* allows exemptions to be made. For example, the intention is to use this power to disregard payments where the pension payments are in connection with the death of a member of a scheme, or where an occupational pension scheme is in deficit or has insufficient resources to pay the full pension.

The *new section 30DD(4)(b)* gives the power to make regulations to assume a notional income in cases where claimants deliberately choose not to take a pension payment in order to increase or maximise their benefit.

The intention is to make similar regulations to those already in place for other benefits, including Income Support and Jobseeker's Allowance. In the case of personal pensions, the regulations prevent any notional income being taken into account before the person is aged 60. They also provide for notional income to be assessed on the basis of information supplied by the pension provider, using tables supplied by the Government Actuary's Department. It will allow the DSS to take into account the amount of pension income which the claimant deferred. But the amount would have to be greater than £85 a week before it would affect IB.

The *new section 30DD(4)(c)* enables regulations to provide that it is the aggregate amount of pension payments that will be deducted from IB if they exceed the threshold.

The *new section 30DD(4)(d)* provides the power to apportion pension payments into weekly payments.

For example, this will enable monthly pension payments to be converted into weekly amounts so that they can be deducted from IB on a weekly basis.

*These notes refer to the Welfare Reform and Pensions Act 1999
(c.30) which received Royal Assent on 11 November 1999*

The *new section 30DD(5)* defines what is meant by “pension payment”. This includes payment from personal pension, occupational pension and public service schemes.

The *new section 30DD(5)(b)* provides the power to prescribe other types of pension, or similar, income for which a deduction may be made (as is the case for JSA).

It is intended to use the power to prescribe that permanent health insurance payments should be deducted from future IB claims. This would apply to those permanent health insurance schemes that are arranged by employers to provide for employees, where the contract of employment has ended. It would not apply to schemes used to fund normal occupational sick pay. In the same way as for occupational and personal pensions, the first £85 a week would be totally disregarded and 50% of the remainder deducted from future IB.

The power in *new section 30DD(5)(c)* to specify other payments would enable income to be taken into account if new products are developed which provide similar income to occupational and personal pensions or permanent health insurance.

The *new section 30DD(6)* provides the definition of the occupational pensions, personal pensions and public service pensions to be taken into account when assessing IB. These pensions are defined in the Pension Schemes Act 1993 and are already used for JSA purposes.

The Act provides (at *Part II of Schedule 8*) for any regulations concerning the definition of pension payments to be subject to affirmative resolution by both Houses of Parliament. That is to say, the regulations must be approved in draft by Parliament before being made. This is in line with the procedures for JSA.

Part II of Schedule 8 makes some minor amendments to existing legislation as a result of the Act’s provisions for IB.

Section 64: Incapacity benefit: persons incapacitated in youth

This section allows a new category of people to claim Incapacity Benefit (IB). They are those people aged between 16 and 19 (or, in prescribed cases, age 25 – see below) who would currently claim and receive Severe Disablement Allowance (SDA). Section 65 of this Act abolishes SDA for new claimants.

Subsection (1) amends the entitlement conditions for IB set out in section 30A of the Contributions and Benefits Act, and provides that this group may receive IB without meeting the contribution conditions.

Subsections (2) and (4) make consequential amendments.

Subsection (3) inserts a *new subsection (2A)* into section 30A of the Contributions and Benefits Act.

To be entitled to IB without having satisfied the contribution conditions, a person must have become incapable of work before the age of 20 (or 25 in certain circumstances), must satisfy the conditions of residence or presence in Great Britain, and must not be in full-time education. *Subsection (2A)(c)* provides that these people must also have been continuously incapable of work for at least 196 days (28 weeks) before benefit can be paid. This is intended to ensure that the benefit is correctly targeted at long-term incapacity for work.

Subsection (2A)(b) gives a regulation-making power to extend the cut-off age from 20 to 25 in certain circumstances.

It is intended to use this power to extend the age cut-off from 20 to 25 for people in education, or vocational or occupational training. The intended qualifying conditions for extending the age cut-off will be that:

they must have started the course before their 20th birthday; and

they must have finished their course no earlier than in one of the last two complete tax years before the year in which they claim benefit (the tax year starts on 6 April and the benefit year begins in the next January). So, for example, if their course finishes in June 2005, they will be able to claim IB until December 2008 (so long as they are still under 25).

The inserted subsection (2A)(d) gives regulation-making powers to define the residence and presence conditions. It is intended to use this power to require claimants to have been ordinarily resident or present in Great Britain for a total of at least 26 weeks in the year up to the date of entitlement.

Once a person has qualified for IB under these new rules they may re-claim benefit after the age of 20, following a break in claiming, if the new claim “links” with the previous period of entitlement to IB. For claims to link, the break between benefit claims must not exceed 8 weeks. For those who leave benefit because of starting work the linking period is extended to 52 weeks under the Welfare to Work Regulations 1998. And, for those who leave benefit and claim Disabled Persons` Tax Credit or start a Training for Work course, the linking period is extended to two years.

Subsection (5) inserts *new subsections (6) and (7)* into section 30A of the Contributions and Benefits Act. It is intended to use the power in subsection (6) to allow people to re-qualify for short-term benefit even though they may be over the age limit, if they were awarded IB under the new conditions in subsection (2A) and left benefit to work but earned below the lower earnings limit, or went abroad, and did not re-qualify for benefit through the linking rules.

The intention is to use the power in subsection (7) to define “full-time education” to apply only to people aged 16-18, and to provide that, in order to qualify for benefit, they must spend less than 21 hours a week in education (excluding any time spent on a course not normally taken by a non-disabled student).

Section 65: Abolition of Severe Disablement Allowance;

This section, and *Part IV of Schedule 13*, abolishes Severe Disablement Allowance (SDA), by repealing sections 68 and 69 of the Contributions and Benefits Act.

SDA is a non-contributory, non means-tested benefit, paid to people who cannot work because of illness or disability, and who have not paid sufficient National Insurance contributions to qualify for Incapacity Benefit (IB). For people who become incapable of work before the age of 20, the qualifying test of “incapacity” is the same for SDA as for IB—but those aged 20 and over must additionally be assessed by a doctor as “80% disabled”.

Approximately 70% of SDA recipients also claim Income Support to top up their income, and therefore see no financial gain from claiming the benefit. This is because SDA is paid at a lower rate, and is always deducted pound for pound when calculating the amount of Income Support payable.

Part IV of Schedule 13 makes the necessary consequential repeals for the abolition of SDA.

Section 85 provides a regulation-making power to make transitional and saving provisions which will allow the Government to protect existing recipients. In *A new contract for welfare: SUPPORT FOR DISABLED PEOPLE* (Cm 4103), the Government said that those recipients aged 20 or above at the point of change would continue to get the benefit.

The Government intends to make regulations that will automatically transfer, a year after the changes are introduced, those under 20s who were entitled to SDA at the point of change, onto long-term Incapacity Benefit. This will give this group of people access

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to long-term IB at the same time as those who became entitled to short-term IB under the new entitlement conditions introduced by section 64 of this Act.

Sections 66-67: Disability Benefits

Sections 66 and 67 make three changes to disability benefits. They:

introduce regulation-making powers as to entitlement to Attendance Allowance;

amend the terminology relating to awards made for an indefinite period; and

extend entitlement to the higher rate mobility component of Disability Living Allowance to 3-and 4-year-old severely disabled children with serious mobility problems.