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STATUTORY INSTRUMENTS

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**1995 No. 310**

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

**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>M1</sup>.

(4) [<sup>F1</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-term incapacity benefit in the same period of incapacity for work in which he is not over pensionable age.

[<sup>F2</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

- F1** 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)**
- F2** [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

- M1** Part X11A 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>M2</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>M3</sup> together with any increase under section 86A of that Act (increase for adult dependants) <sup>M4</sup> equals or exceeds that rate.

#### Marginal Citations

- M2** [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.
- M3** [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.
- M4** [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>M5</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>M6</sup>; and
- (b) had been entitled to sickness benefit in a period of interruption of employment [<sup>F3</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>M7</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

- F3** 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

- M5** 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.
- M6** [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](#).
- M7** 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—

- (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>M8</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

**M8** 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>M9</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>M10</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>M11</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

- M9** 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.
- M10** 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.
- M11** 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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Incapacity Benefit) (Transitional) Regulations 1995, PART III.