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STATUTORY INSTRUMENTS

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**1995 No. 987**

**SOCIAL SECURITY**

**The Social Security (Incapacity for Work)  
Miscellaneous Amendments Regulations 1995**

<i>Made</i>	- - - -	<i>3rd April 1995</i>
<i>Coming into force</i>		
<i>Regulation 4</i>		<i>13th April 1995</i>
<i>Remainder</i>		<i>3rd April 1995</i>

Whereas a draft of these Regulations was laid before Parliament in accordance with the provisions of sections 4, 6 and 7 of the Social Security (Incapacity for Work) Act 1994<sup>(1)</sup> and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 4, 7 and 12 of the Social Security (Incapacity for Work) Act 1994, sections 171A, 171C, 171D and 171E of the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>, sections 59 and 61A of, and Schedule 3 to, the Social Security Administration Act 1992<sup>(3)</sup> and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made by virtue of, or consequential upon, the Social Security (Incapacity for Work) Act 1994 and is made before the end of the period of 6 months beginning with the coming into force of that Act<sup>(4)</sup>, hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995.

(2) Regulation 4 shall come into force on 13th April 1995 immediately after the coming into force of the Social Security (Medical Evidence) Amendment Regulations 1994<sup>(5)</sup> and the remaining provisions of these Regulations shall come into force forthwith.

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(1) 1994 c. 18.  
(2) 1992 c. 4; sections 171A and 171C were inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and sections 171D and 171E were inserted by section 6 of that Act.  
(3) 1992 c. 5; section 61A was inserted by section 6(2) of the Social Security (Incapacity for Work) Act 1994 (c. 18).  
(4) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5), the effect of which is that regulations which are made by virtue of or consequential on a specified enactment and within 6 months after the coming into force of that enactment are not required to be referred to the Social Security Advisory Committee.  
(5) S.I.1994/2975.

## Amendment of the Social Security (Incapacity for Work) (General) Regulations 1995

2.—(1) The Social Security (Incapacity for Work) (General) Regulations 1995<sup>(6)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 6 (information required for determining capacity for work)—

(a) in paragraph (1) at the beginning for the words “Subject to paragraph (2)” there shall be substituted the words “Subject to paragraphs (2) and (3)”; and

(b) for paragraph (3) there shall be substituted the following paragraph—

“(3) Paragraph (1) shall not apply in relation to a determination—

(a) whether a person is capable of work for the purposes of a claim for unemployment benefit; or

(b) whether a person is to be treated as incapable of work under any of regulations 10 to 14.”.

(3) In regulation 10 (certain persons with a severe condition to be treated as incapable of work)—

(a) in paragraph (1) at the beginning there shall be inserted the words “Where the all work test applies,” and for the words “day on which” there shall be substituted the words “day in respect of which”;

(b) in paragraph (2)—

(i) for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) that he receives, in respect of the day in question, a payment of—

(i) the highest rate care component of disability living allowance;

(ii) an increase of disablement pension by virtue of section 104 of the Contributions and Benefits Act and regulation 19 of the Social Security (General Benefit) Regulations 1982 (increase of disablement pension for constant attendance)<sup>(7)</sup> at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to that Act<sup>(8)</sup>;

(iii) a constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military, and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983<sup>(9)</sup>;

(iv) an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983<sup>(10)</sup>.”;

(ii) in sub-paragraph (e) for head (vii) there shall be substituted the following head—

“(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation.”.

(4) In regulation 16(1) (which relates to persons who work) for the words “regulations 10 to 15 or 26” there shall be substituted the words “any of regulations 10 to 15 or 27”.

(5) In regulation 17(2)(a) (which relates to exempt work) for the figure “£43” there shall be substituted the figure “£44”.

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<sup>(6)</sup> S.I. 1995/311.

<sup>(7)</sup> S.I. 1982/1408.

<sup>(8)</sup> The rates specified in Schedule 4, Part V, paragraph 2 were increased by article 3 of the Social Security Benefits Up-Rating Order 1995 (S.I. 1995/559).

<sup>(9)</sup> S.I. 1983/883; relevant amending instrument is 1994/772.

<sup>(10)</sup> S.I. 1983/686; relevant amending instrument is 1994/715.

(6) After regulation 17 there shall be inserted the following regulation—

**“Person who claims unemployment benefit to be treated as capable of work**

**17A.** Where the all work test applies, a person shall be treated as capable of work on each day in respect of which he claims unemployment benefit, notwithstanding that it has been determined that he satisfies that test or that he is, or is to be treated as, incapable of work under regulation 10 or 27, if on that day—

- (a) the following conditions are satisfied, namely—
  - (i) that he has done some work or undertaken a course of education or training or similar activity in preparation for work while suffering from the specific disease or bodily or mental disablement which led to that determination; and
  - (ii) that since he did so, that disease or disablement has not worsened, nor is he suffering from any further disease or bodily or mental disablement which might affect his capacity for work; or
- (b) he is able to show that he has a reasonable prospect of obtaining employment.”.

(7) In regulation 18(1)(a) (disqualification for misconduct etc.) the words “that this disqualification shall not apply” shall be omitted.

(8) For regulation 20 there shall be substituted the following regulation—

**“Adjudication officer to determine certain questions**

**20.** Where, in relation to a determination for any purpose to which Part XIIA of the Contributions and Benefits Act applies, a question arises as to—

- (a) whether a person is, or is to be treated as, capable or incapable of work in respect of any period; or
- (b) whether a person is terminally ill,

that question shall be determined by an adjudication officer notwithstanding that other questions fall to be determined by another authority.”.

(9) In regulation 22(2)(b) (appointment of medical assessors) before the word “adviser” there shall be inserted the word “paid”.

(10) In regulation 28(2)(b)(iii) for the words “satisfied any requirements of the Secretary of State” there shall be substituted the words “provided the information requested by the Secretary of State”.

**Amendment of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995**

**3.—(1)** The Social Security (Incapacity Benefit) (Transitional) Regulations 1995(**11**) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 13(2)(b) (special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work) for the words “within a period” there shall be substituted the words “occurring in whole or in part in a period”.

(3) After regulation 17 there shall be inserted the following regulation—

**“Awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link**

**17A.** Where a person had been entitled to invalidity benefit in a period of interruption of employment occurring in whole or in part in a period not exceeding 57 days immediately before the appointed day and becomes entitled to an award of incapacity benefit on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day, that award shall have effect as if it were an award of long-term incapacity benefit.”.

(4) For regulation 18(9) (definition of transitional cases) there shall be substituted the following paragraph—

“(9) For the purposes of Part IV a “transitional case” means a case where a person is entitled to an award of long-term incapacity benefit by virtue of regulation 17 or 17A.”.

(5) In regulation 20(2)(b) (special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work) for the words “which arose within a period” there shall be substituted the words “occurring in whole or in part in a period”.

(6) In regulation 22(1)(b)(ii) (effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term incapacity benefit) for the word “pension” there shall be substituted the words “guaranteed minimum pension”.

(7) In regulation 25(2)(c), (d) and (f), (3)(c) and (d), (4) and (5) (further provisions for dependants in respect of the application of old saving provisions) after each place where the words “Social Security” appear, there shall be inserted the word “Benefit”.

(8) After regulation 28 there shall be inserted the following regulation—

**“Transitional provision for entitlement to severe disablement allowance where a person has been engaged in training for work**

**28A.** For the purposes of entitlement to severe disablement allowance where a person—

- (a) at any time in a period of not more than 57 days immediately before the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983(12); and
- (b) was entitled to severe disablement allowance in a period of interruption of employment within a period not exceeding 57 days prior to the first day of attendance on the training course; and
- (c) becomes incapable of work within a period of 57 days after the last day of attendance on a training course,

he shall be treated as incapable of work and disabled for the days falling within the periods referred to in paragraphs (a), (b) and (c) notwithstanding that he may have been capable of work on any of those days.”.

(9) In regulation 31(application of the new tests of incapacity for work)—

- (a) in paragraph (4) for the letter “(h)” there shall be substituted the letter “(k)”;
- (b) in paragraph (5)—
  - (i) in head (ii) of sub-paragraph (a) for the words “was not capable” there shall be substituted the words “was incapable”;

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(12) 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.

- (ii) in sub-paragraph (c) after the words “the appointed day” there shall be inserted the words “and the spell of incapacity for work which is running at the appointed day continues;”;
- (iii) in sub-paragraph (h) for head (vii) there shall be substituted the following head—
  - “(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;”.
- (iv) after sub-paragraph (h) there shall be added the following sub-paragraphs—
  - “(i) a person who was in receipt of a payment of an increase of disablement pension by virtue of section 104 of the 1992 Act and regulation 19 of the Social Security (General Benefit) Regulations 1982 (increase of disablement pension for constant attendance)(**13**) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to the 1992 Ac(**14**) immediately before the appointed day and continues to be in receipt of such payment;
  - (j) a person who was in receipt of a payment of constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(**15**) immediately before the appointed day and continues to be in receipt of such payment;
  - (k) a person who was in receipt of a payment of an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983(**16**) immediately before the appointed day and continues to be in receipt of such payment.”.

#### **Amendment of the Social Security (Medical Evidence) Regulations 1976**

4.—(1) The Social Security (Medical Evidence) Regulations 1976(**17**) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1)(d) for the words “from a doctor” there shall be substituted the words “in accordance with sub-paragraphs (a) to (c)” and after the word “refrain” there shall be inserted the words “(or should have refrained)”.

(3) In Schedule 1B, Part I, paragraph 3, for the words “, 10 and 11” there shall be substituted the words “and 9 to 13”.

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(13) S.I. 1982/1408.

(14) The rates specified in Schedule 4, Part V, paragraph 2 were increased by article 3 of the Social Security Benefits Up-Rating Order 1995 (S.I. 1995/559).

(15) S.I. 1983/883; relevant amending instrument is 1994/772.

(16) S.I. 1983/686; relevant amending instrument is 1994/715.

(17) 1976/615; relevant amending instruments are S.I. 1982/699, 1989/1686, 1992/247 and 1994/2975.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed by authority of the Secretary of State for Social Security.

3rd April 1995

*William Hague*  
Minister of State,  
Department of Social Security

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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 General Regulations”), the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (“the Transitional Regulations”) and the Social Security (Medical Evidence) Regulations 1976 (“the Medical Evidence Regulations”).

Regulation 2 amends the General Regulations. In particular, paragraphs (2) and (6) relate to claims for unemployment benefit (for which there is a condition that a person be capable of work). Paragraph (2) excludes such claims from the evidence requirements in regulation 6 of the General Regulations and paragraph (6) makes provision for treating claimants as capable of work when they claim unemployment benefit. Paragraph (3) adds further categories of persons who are to be treated as incapable of work. Paragraph (5) increases the earnings limit for persons who undertake certain work on the advice of a doctor. Paragraph (8) makes further provision as to the questions which must be determined by an adjudication officer. The remaining provisions in regulation 2 make minor amendments to clarify provisions in the General Regulations.

Regulation 3(2), (5), (6) and (7) of these Regulations make minor amendments to clarify regulations 13, 20, 22 and 25 of the Transitional Regulations. Regulation 3(3) and (4) makes provision for claims for incapacity benefit in cases where the period of interruption of employment and period of incapacity for work link. Regulation 3(8) makes transitional provision for entitlement to severe disablement allowance after a period engaged in training for work. Regulation 3(9)(a), (b) and (c) makes minor amendments to regulation 31(5) of the Transitional Regulations in order to clarify the provisions in respect of the cases which fall into the list of cases which are exempt from the new medical test. Regulation 3(9)(d) adds further categories of persons who are to be treated as incapable of work under the new medical test.

Regulation 4 makes minor amendments to the Medical Evidence Regulations, which set out the medical evidence required for the purposes of determining incapacity for work.

These Regulations do not impose a charge on business.