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## STATUTORY INSTRUMENTS

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# 1998 No. 2231

## SOCIAL SECURITY

### TERMS AND CONDITIONS OF EMPLOYMENT

## The Social Security (Welfare to Work) Regulations 1998

*Made* - - - - *10th September 1998*  
*Laid before Parliament* *14th September 1998*  
*Coming into force* - - *5th October 1998*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 30C(4) (b), 47(6), 68(11)(b)(i), (ca) and (cc), 123(1)(d) and (e), 131(10), 135(1), 137(1), 171A, 171C, 171D, 171E, 171G(2) and 175(1) to (4) of, and paragraph 1 of Schedule 11 to, the Social Security Contributions and Benefits Act 1992<sup>F1</sup>, sections 4 and 12 of the Social Security (Incapacity for Work) Act 1994<sup>F2</sup>, section 4(5) of the Jobseekers Act 1995<sup>F3</sup> and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned<sup>F4</sup>, and agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it<sup>F5</sup>, hereby makes the following Regulations:

- F1** 1992 c. 4. Section 30C was inserted by section 3(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#). Section 68 was amended by section 9 of, and paragraph 18 of Schedule 1 to, that Act. Section 123(1)(d) was inserted, section 131 was substituted, and section 137 was amended, with respect to council tax benefit, by Schedule 9 to the [Local Government Finance Act 1992 \(c. 14\)](#). Sections 171A and 171C were inserted by section 5, and sections 171D, 171E and 171G were inserted by section 6(1), of the Social Security (Incapacity for Work) Act. Sections 171G(2) and 137(1) are cited because of the meaning assigned to the word “prescribed”.
- F2** 1994 c. 18.
- F3** 1995 c. 18.
- F4** See the [Social Security Administration Act 1992 \(c. 5\)](#), [section 176\(1\)](#).
- F5** See the [Social Security Administration Act 1992 \(c. 5\)](#), [section 173\(1\)\(b\)](#).

## PART I

### GENERAL

#### Citation and commencement

1. These Regulations may be cited as the Social Security (Welfare to Work) Regulations 1998 and shall come into force on 5th October 1998.

## PART II

### CONTRIBUTORY AND NON-CONTRIBUTORY BENEFITS AND STATUTORY SICK PAY REGULATIONS

#### Amendment of the Social Security (Incapacity Benefit) Regulations 1994

2. After regulation 5 of the Social Security (Incapacity Benefit) Regulations 1994 <sup>F6</sup> (night workers) there shall be inserted—

**“ Calculating periods of incapacity for work for welfare to work beneficiaries**

**5A.** For the purposes of incapacity benefit, in the case of a person who has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 as a welfare to work beneficiary, section 30C(1)(c) of the Contributions and Benefits Act (any two periods of incapacity for work not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work) shall have effect as if for the reference to 8 weeks there were substituted a reference to 52 weeks.”

<sup>F7</sup>

**F6** [S.I. 1994/2946.](#)

**F7** [S.I. 1995/311](#); regulation 13A is inserted by regulation 4 of these Amending Regulations.

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

3.—(1) The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 <sup>F8</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) After regulation 17A <sup>F9</sup> (awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link) there shall be inserted—

**“ Calculating periods of incapacity for work for welfare to work beneficiaries in long-term incapacity benefit transitional cases**

**17B.** For the purposes of transitional cases, where a person, to whom regulation 17(1) (transitional awards of long-term incapacity benefit) or regulation 17A (awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link) applies, has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 to have become a welfare to work beneficiary, section 30C(1)(c) of the 1992 Act (any two periods of incapacity for work not separated by a period of more than 8 weeks shall be treated as one period of incapacity for

work) shall have effect as if for the reference to 8 weeks there were substituted a reference to 52 weeks.”.

(3) In regulation 23 (increase of Category A retirement pension for incapacity)–

(a) after the word “23” there shall be inserted the words “ —(1) ”; and

(b) at the end, there shall be inserted–

“(2) In the case of a person who is a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995, the reference in paragraph (1) to a period of 57 days shall be treated as a reference to a period of 52 weeks.”.

(4) In regulation 24 (increase of rate of long-term incapacity benefit for dependants in transitional cases)–

(a) in paragraph (7), for the words “A person” there shall be substituted “ Except in a case where paragraph (7A) applies, a person ”;

(b) after paragraph (7), there shall be inserted–

“(7A) The exception referred to in paragraph (7) applies only if the person–

(a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995; and

(b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995.”.

(5) In regulation 25 <sup>F10</sup> (further provisions for dependants in respect of the application of old saving provisions)–

(a) in paragraph (3), for the words “The old saving provisions” there shall be substituted “ Except in a case where paragraph (3A) applies, the old saving provisions ”;

(b) after paragraph (3), there shall be inserted–

“(3A) The exception referred to in paragraph (3) applies only if the person–

(a) has been determined to be a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995; and

(b) is not entitled to incapacity benefit on any day in a period falling within a linking term within the meaning of regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995.”.

(6) In regulation 28 (transitional provisions for an increase of severe disablement allowance for adult dependants), in paragraph (1), for the words “regulation 24(2) to (7)” there shall be substituted the words “ regulation 24 (2) to (7A) ”.

(7) In regulation 31 <sup>F11</sup> (application of the new tests of incapacity for work), in paragraph (5)(c), after the word “spell” there shall be inserted the words “ or period ”.

**F8** [S.I. 1995/310](#).

**F9** Regulation 17A was inserted by [S.I. 1995/987](#).

**F10** Regulation 25 was amended by [S.I. 1995/987](#).

**F11** Regulation 31 was amended by [S.I. 1995/987](#) and 1996/3207.

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

4.—(1) The Social Security (Incapacity for Work) (General) Regulations 1995 <sup>F12</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) After regulation 13 (person receiving certain regular treatment) there shall be inserted the following—

**“ Welfare to work beneficiary**

**13A.**—(1) Subject to paragraph (3), a person is a “welfare to work beneficiary” on any day in a linking term, where he—

- (a) was incapable of work for a period of incapacity for work of more than 196 days in his immediate past period of incapacity for work;
- (b) ceased to be entitled to the benefit at the end of that immediate past period of incapacity for work on a day which falls on or after 5th October 1998;
- (c) became engaged in remunerative work within one week of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; and
- (d) either—
  - (i) gave notice, within a period of a month after so ceasing to be entitled to that benefit, to the Secretary of State that he had been engaged in remunerative work within one week from the end of that past period of incapacity for work, or
  - (ii) had successfully appealed against an assessment made in respect of the all work test or a determination in respect of the own occupation test in relation to his immediate past period of incapacity for work, which period, had that assessment or determination not been made, would have consisted of a period of incapacity for work of more than 196 days.

(2) A welfare to work beneficiary shall be treated as incapable of work on any day in a period, consisting of a cumulative number of days of incapacity for work not exceeding 91 days in total, beginning within the linking term and ending on a day not later than 13 weeks from the end of that linking term, where he—

- (a) claims benefit for any day falling within that linking term;
- (b) submits evidence in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976 <sup>F13</sup>; and
- (c) in his immediate past period of incapacity for work—
  - (i) had been assessed and satisfied the all work test in accordance with Part III, or
  - (ii) had been treated under regulation 10 (certain persons with a severe condition to be treated as incapable of work) as incapable of work.
- (3) a person is not a welfare to work beneficiary under paragraph (1) if—
  - (a) his immediate past period of incapacity for work was ended by a determination (other than a determination in the circumstances applicable to a person under paragraph (1)) that he was, or was treated as, capable of work; or
  - (b) his immediate past period of incapacity for work ended within a period of less than 28 weeks from the end of his last linking term.
- (4) For the purposes of this regulation—

“benefit” means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay), or under the Jobseekers Act 1995 <sup>F14</sup>, for which entitlement is dependent on incapacity for work;

“linking term” means a period of 52 weeks (whether or not broken by days of incapacity for work) fixed on the first day immediately following the last day of incapacity in a period of incapacity for work;

“immediate past period of incapacity for work” means a period of incapacity for work under section 30C(1) of the Contributions and Benefits Act <sup>F15</sup>;

“remunerative work” means—

- (a) work (other than exempt work under regulation 17) for which payment is made or which is done in expectation of payment, or
- (b) attendance on a training course in respect of which the person receives a training allowance in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 <sup>F16</sup> or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 <sup>F17</sup>.”

(3) In regulation 17(2)(b) <sup>F18</sup> (exempt work), the words “or (b)” shall be omitted.

**F12** [S.I. 1995/311](#).

**F13** [S.I. 1976/615](#); regulation 2 was amended by [S.I. 1982/699](#), 1987/409, 1992/247, 1994/2975 and 1995/987.

**F14** [1995 c. 18](#).

**F15** [1992 c. 4](#). Section 30C was inserted by section 3(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).

**F16** [1973 c. 50](#).

**F17** [1990 c. 35](#).

**F18** Regulation 17 was amended by [S.I. 1996/484](#), 1997/546 and 1998/407.

## Amendment of the Social Security (Severe Disablement Allowance) Regulations 1984

5.—(1) The Social Security (Severe Disablement Allowance) Regulations 1984 <sup>F19</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 7 <sup>F20</sup> (days for which persons are to be regarded as incapable of work for the purposes of severe disablement allowance), after paragraph (1A) (night workers) there shall be inserted—

“(1B) For the purposes of severe disablement allowance, a person shall be treated as incapable of work on any day in a period, consisting of a cumulative number of days of incapacity for work not exceeding 91 days in total for which he makes a claim for severe disablement allowance, beginning within a linking term and ending on a day not later than 13 weeks from the end of that linking term in respect of which he has been determined to be a person who is a welfare to work beneficiary; and in this paragraph “linking term” and “welfare to work beneficiary” have the meanings given in regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 (welfare to work beneficiary).”.

(3) In regulation 10 <sup>F21</sup> (adjudication)—

(a) after paragraph (1)(h) there shall be inserted—

“(hh) subject to paragraph (2B) and during the period referred to in regulation 7(1B), evidence that he has been determined on that day to be a welfare to work

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beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995;”;

(b) after paragraph (2A) there shall be inserted–

“(2B) Paragraph (1)(hh) shall not apply to a welfare to work beneficiary who, in his immediate past period of incapacity for work within the meaning of regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995, was not assessed to be disabled in accordance with section 68(6) of the Contributions and Benefits Act.”.

**F19** [S.I. 1984/1303](#).

**F20** Regulation 7 was amended by [S.I. 1994/2947](#).

**F21** Regulation 10 was amended by [S.I. 1986/1933](#), 1988/1843 and 1997/1009.

### **Amendment of the Statutory Sick Pay (General) Regulations 1982**

6. After paragraph (2) of regulation 3 of the Statutory Sick Pay (General) Regulations 1982 <sup>F22</sup> (period of entitlement ending or not arising) there shall be inserted–

“(2A) A period of entitlement in respect of an employee who was entitled to incapacity benefit, maternity allowance or severe disablement allowance shall not arise in relation to any day within a period of incapacity for work beginning with the first day on which paragraph 2(d) of Schedule 11 to the Contributions and Benefits Act <sup>F23</sup> ceases to have effect where the employee in question is a person to whom regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 (welfare to work beneficiary) applies.”.

**F22** [S.I. 1982/894](#); regulation 3 was amended by [S.I. 1986/477](#), 1987/868 and 1994/1367.

**F23** Paragraph 2(d) was substituted by paragraph 43(2) of Schedule 1 to the [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#).

### **Amendment of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979**

7. After regulation 3 of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979 <sup>F24</sup> (provisions applying after election) there shall be inserted–

**“ Calculating periods of incapacity for work for welfare to work beneficiaries entitled to an increase of long-term incapacity benefit**

**3A.** Section 47(1) of the Social Security Contributions and Benefits Act 1992 <sup>F25</sup> (increase of Category A retirement pension for long-term incapacity) shall have effect, in any case where a person is treated in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 as a welfare to work beneficiary, as if for the reference to 8 weeks there were substituted a reference to 52 weeks.”.

**F24** [S.I. 1979/642](#); regulation 3 was amended by [S.I. 1989/1642](#).

**F25** [1992 c. 4](#).

## PART III

### AMENDMENT OF INCOME-RELATED BENEFITS AND JOBSEEKER'S ALLOWANCE REGULATIONS

#### Amendment of the Council Tax Benefit (General) Regulations 1992

<sup>F26</sup>8. ....

**F26** Regs. 8-12 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Amendment of the Council Tax Benefit (General) Amendment Regulations 1997

<sup>F26</sup>9. ....

**F26** Regs. 8-12 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Amendment of the Housing Benefit (General) Regulations 1987

<sup>F26</sup>10. ....

**F26** Regs. 8-12 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Amendment of the Housing Benefit (General) Amendment Regulations 1995

<sup>F26</sup>11. ....

**F26** Regs. 8-12 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Amendment of the Housing Benefit and Council Tax Benefit (General) Amendment Regulations 1997

<sup>F26</sup>12. ....

**F26** Regs. 8-12 revoked (6.3.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 1** (with regs. 2, 3, Sch. 3, Sch. 4)

#### Amendment of the Income Support (General) Regulations 1987

13.—(1) The Income Support (General) Regulations 1987 <sup>F27</sup> shall be amended in accordance with the following paragraphs.

(2) In regulation 2 (interpretation) the following definition shall be inserted in the appropriate place—

““welfare to work beneficiary” means a person—

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- (a) to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies; and
  - (b) who again becomes incapable of work for the purposes of Part XIA of the Contributions and Benefits Act 1992 <sup>F28</sup>.”.
- (3) In Schedule 2 (applicable amounts)–
- (a) in paragraph 10 (higher pensioner premium) the following sub-paragraph shall be added–
 

“(4) In the case of a claimant who is a welfare to work beneficiary, references in sub-paragraphs (1)(b)(ii), (2)(b)(ii) and (3)(b) to a period of 8 weeks shall be treated as references to a period of 52 weeks.”;
  - (b) in paragraph 12 (additional condition for higher pensioner and disability premiums) after sub-paragraph (1) there shall be inserted the following sub-paragraph–
 

“(1A) In the case of a claimant who is a welfare to work beneficiary, the reference in sub-paragraph (1)(b) to a period of 56 days shall be treated as a reference to a period of 52 weeks.”.
- (4) In Schedule 3 (housing costs)–
- (a) in paragraph 7 (transitional protection) the following sub-paragraph shall be added–
 

“(10) In the case of a person who is a welfare to work beneficiary, the references in sub-paragraphs (5)(c) and (7) to a period of 12 weeks shall be treated as references to a period of 52 weeks.”;
  - (b) in paragraph 14 (linking rule) the following sub-paragraph shall be added–
 

“(10) In the case of a person who is a welfare to work beneficiary, the references in sub-paragraphs (1)(a)(ii), (1)(d) and (1)(f)(iii) to a period of 12 weeks shall be treated as references to a period of 52 weeks.”.

**F27** [S.I. 1987/1967](#); relevant amending instruments are [S.I. 1988/663](#), 1992/468, 1993/315, 1995/482, 2303 and 2927 and 1996/1944.

**F28** Part XIA was inserted by sections 5 and 6 of the [Social Security \(Incapacity for Work\) Act 1994](#) (c. 18).

### **Amendment of the Jobseeker’s Allowance Regulations 1996**

**14.**—(1) The Jobseeker’s Allowance Regulations 1996 <sup>F29</sup> shall be amended in accordance with the following paragraphs.

(2) In regulation 1 (citation, commencement and interpretation) the following definition shall be inserted in the appropriate place–

““welfare to work beneficiary” means a person–

- (a) to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies; and
- (b) who again becomes incapable of work for the purposes of Part XIA of the Contributions and Benefits Act 1992;”.

(3) In paragraph 12 of Schedule 1 (applicable amounts) the following sub-paragraph shall be added–

“(3) In this paragraph where a claimant’s partner is a welfare to work beneficiary, sub-paragraphs (1)(a)(ii) and (2)(b) shall apply to him as if for the words “8 weeks” there were substituted the words “52 weeks”.”.

(4) In paragraph 13 of Schedule 2 (housing costs) the following sub-paragraph shall be added–



“(12) Where the claimant’s partner to whom this paragraph applies is a welfare to work beneficiary, sub-paragraphs (1)(a)(ii), (1)(d) and (1)(f)(iii) shall apply to him as if for the words “twelve weeks” there were substituted the words “52 weeks”.”.

**F29** [S.I. 1996/207](#).

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

*Stephen C. Timms*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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## EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend—

the instruments referred to in Parts II and III. Part I contains citation and commencement provisions;

in Part II; the Social Security (Incapacity Benefit) Regulations 1994 (S.I. 1994/2946) (“the Incapacity Benefit Regulations”), the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (S.I. 1995/310) (“the Incapacity Benefit Transitional Regulations”), the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I. 1995/311) (“the Incapacity General Regulations”), the Social Security (Severe Disablement Allowance) Regulations 1984 (S.I. 1984/1303) (“the Severe Disablement Allowance Regulations”), the Statutory Sick Pay (General) Regulations 1982 (S.I. 1982/894) (“the Statutory Sick Pay Regulations”) and the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979 (S.I. 1979/642) (“the Widow’s Benefit and Retirement Pensions Regulations”).

The Incapacity Benefit Regulations are amended so that two periods of incapacity for work separated by less than 52 weeks are treated as one period of incapacity for welfare to work beneficiaries (regulation 2).

The Incapacity Benefit Transitional Regulations are amended so that an incapacity transitional long-term award recipient who becomes a welfare to work beneficiary may return, within a period of 52 weeks, to receiving that benefit (regulation 3).

The Incapacity General Regulations are amended to define welfare to work beneficiaries; they are treated as incapable of work for a period of up to 91 days in total when they become incapable again within a period of 52 weeks; restrictions on claimants who do voluntary work are also removed (regulation 4).

The Severe Disablement Allowance Regulations are amended so that welfare to work beneficiaries are treated as incapable of work, and as disabled, for a period of up to 91 days when they reclaim severe disablement allowance within 52 weeks (regulation 5).

The Statutory Sick Pay Regulations are amended so that employers are not liable to pay statutory sick pay to certain employees who are treated as welfare to work beneficiaries and who become incapable of work again within 52 weeks (regulation 6).

The Widow’s Benefit and Retirement Pensions Regulations are amended so that welfare to work beneficiaries who claim Category A retirement pension are entitled to an increase of retirement pension for incapacity if they were entitled to a long-term incapacity benefit age addition in the period of 52 weeks before they reach pension age (regulation 7); and

in Part III; the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1914), the Council Tax Benefit (General) Amendment Regulations 1997 (S.I. 1997/1841), the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971), the Housing Benefit (General) Amendment Regulations 1995 (S.I. 1995/1644), the Housing Benefit and Council Tax Benefit (General) Amendment Regulations 1997 (S.I. 1997/852), the Income Support (General) Regulations 1987 (S.I. 1987/1967) and the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207) are amended to extend to 52 weeks certain maximum periods which link separate periods of benefit entitlement where a claimant has ceased to be entitled to the benefit concerned upon becoming a welfare to work beneficiary.

An assessment of the compliance cost for employers of the measures arising from these Regulations has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from Robert Holttum, Department of Social Security, 2nd Floor, The Adelphi, 1–11 John Adam Street, London WC2N 6HT.

**Status:**

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**Changes to legislation:**

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