
STATUTORY INSTRUMENTS

1998 No. 2231

The Social Security (Welfare to Work) Regulations 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⁽¹⁾ (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.”⁽²⁾

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

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

(2) After regulation 17A⁽⁴⁾ (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.”.

(1) S.I.1994/2946.

(2) S.I. 1995/311; regulation 13A is inserted by regulation 4 of these Amending Regulations.

(3) S.I. 1995/310.

(4) Regulation 17A was inserted by S.I. 1995/987.

- (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~~(5)~~ (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~~(6)~~ (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”.

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

4.—(1) The Social Security (Incapacity for Work) (General) Regulations 1995(7) 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—

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- (5) Regulation 25 was amended by S.I. 1995/987.
 (6) Regulation 31 was amended by S.I. 1995/987 and 1996/3207.
 (7) S.I. 1995/311.

“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⁽⁸⁾; 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⁽⁹⁾, 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;

⁽⁸⁾ S.I. 1976/615; regulation 2 was amended by S.I. 1982/699, 1987/409, 1992/247, 1994/2975 and 1995/987.

⁽⁹⁾ 1995 c. 18.

“immediate past period of incapacity for work” means a period of incapacity for work under section 30C(1) of the Contributions and Benefits Act(10);

“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(11) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(12).”

- (3) In regulation 17(2)(b)(13) (exempt work), the words “or (b)” shall be omitted.

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

5.—(1) The Social Security (Severe Disablement Allowance) Regulations 1984(14) shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 7(15) (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(16) (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 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.”.

(10) 1992 c. 4. Section 30C was inserted by section 3(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(11) 1973 c. 50.

(12) 1990 c. 35.

(13) Regulation 17 was amended by S.I. 1996/484, 1997/546 and 1998/407.

(14) S.I. 1984/1303.

(15) Regulation 7 was amended by S.I. 1994/2947.

(16) 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(17) (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(18) 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.”.

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(19) (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(20) (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.”.

(17) S.I. 1982/894; regulation 3 was amended by S.I. 1986/477, 1987/868 and 1994/1367.

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

(19) S.I. 1979/642; regulation 3 was amended by S.I. 1989/1642.

(20) 1992 c. 4.