

Social Security (Incapacity for Work) Act 1994

CHAPTER 18

ARRANGEMENT OF SECTIONS

Incapacity benefit

Section

1. Incapacity benefit: entitlement.
2. Incapacity benefit: rate.
3. Incapacity benefit: supplementary provisions.
4. Power to provide for the transition to incapacity benefit.

Test for incapacity for work

5. Test for incapacity for work.
6. Test of incapacity for work: supplementary provisions.
7. Power to provide for the transition to the new test of incapacity for work.

Statutory sick pay

8. Rate of statutory sick pay.

Other amendments

9. Severe disablement allowance.
10. Disability working allowance.

General

11. Consequential amendments and repeals.
12. General power to make transitional and consequential provision.
13. Saving for existing enactments.
14. Corresponding provision for Northern Ireland.
15. Expenses.
16. Short title, commencement and extent.

SCHEDULES:

- Schedule 1 — Consequential amendments.
Part I — Amendments of the contributions and Benefits Act.
Part II — Amendments of the Administration Act and other enactments.
Schedule 2 — Repeals.

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Ss. 1-4

An Act to provide for incapacity benefit in place of sickness benefit and invalidity benefit; to make provision as to the test of incapacity for work for the purposes of that benefit and other social security purposes; to make provision as to the rate of statutory sick pay; to make other amendments as to certain allowances payable to a person who is or has been incapable of work; and for connected purposes.

[5th July 1994]

Incapacity benefit

Incapacity benefit:
entitlement.

1. *amends 1992 c. 4, see Annex 1, page 2.3821.*

Incapacity benefit: rate.

2. (1)–(6) *makes textual amendments, see Annex 1, page 2.3821.*

2.—(7) Any order under section 150 of the Social Security Administration Act 1992 (up-rating orders) made by the Secretary of State before the commencement of this section shall include provision—

- (a) making such increase (if any) in the sum specified in the provision inserted by subsection (2) above as the amount of short-term incapacity benefit at the higher rate as is necessary to make that sum equal to the higher rate or, if there is only one such rate, to the rate of statutory sick pay payable after the order comes into force; and
- (b) making such increases in the other sums specified in the provisions inserted by subsections (2) and (6) above in Schedule 4 to the Social Security Contributions and Benefits Act 1992 as would have been required if the provisions in question had been in force at all material times.

Incapacity benefit:
supplementary
provisions.
Power to provide for the
transition to incapacity
benefit.

3. *amends 1992 c. 4, see Annex 1, page 2.3821.*

4.—(1) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient for the purposes of, or in connection with, the transition to incapacity benefit from sickness benefit and invalidity benefit.

Nothing in the following provisions of this section shall be construed as restricting the generality of that power.

(2) In this section—
“commencement” means the commencement of sections 1 to 3 above and the consequent repeal of the provisions of the Social Security Contributions and Benefits Act 1992 relating to sickness benefit and invalidity benefit; and
“prescribed” means prescribed by regulations under this section.

(3) Regulations under this section may provide that where a person was entitled to sickness benefit or invalidity benefit immediately before commencement any award of sickness benefit or invalidity benefit shall have effect after commencement, in accordance with the regulations and subject to such modifications as may be prescribed, as an award of incapacity benefit.

In the following provisions of this section such awards are referred to as “transitional awards” of incapacity benefit.

(4) The reference in subsection (3) above to a person who was entitled to sickness benefit or invalidity benefit includes a person who would have been so entitled but for being disqualified by virtue of regulations under section 32 or 59 of the Social Security Contributions and Benefits Act 1992; and regulations under this section may provide that any such disqualification shall have such corresponding effect as may be prescribed in relation to the transitional award.

(5) Regulations under this section may provide that a person's entitlement under a transitional award of incapacity benefit shall, except as may be prescribed, be subject to satisfying the conditions of entitlement to incapacity benefit, and may in particular provide—

- (a) for the determination in accordance with Part XIA of the Social Security Contributions and Benefits Act 1992 of the question whether that person is incapable of work; and
- (b) for the termination of his entitlement on his attaining pensionable age.

Excepted cases may be defined, in particular, by reference to the age of the person on commencement and whether he was receiving invalidity benefit on 1st December 1993 (the date of the announcement of the new scheme).

(6) Regulations under this section may provide—

- (a) that days before commencement which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of incapacity for work for the purposes of incapacity benefit, and
- (b) that days of entitlement to sickness benefit or invalidity benefit, and such other days as may be prescribed, shall be treated as having been days of entitlement to incapacity benefit.

Such provision may be made for the purposes of a transitional award of incapacity benefit or of enabling a claim for incapacity benefit to be made after commencement on the basis that a day of incapacity for work after commencement forms part of a period of incapacity for work beginning before commencement; and such cases are referred to in the following provisions of this section as “transitional cases”.

(7) Regulations under this section may provide—

- (a) for the rate of short-term incapacity benefit under a transitional award to be increased, in such cases as may be prescribed, as if that benefit were sickness benefit and the provisions of Part IV of the Social Security Contributions and Benefits Act 1992 (increases for dependants) continued to apply to that benefit; and
- (b) for the payment in transitional cases, in such circumstances as may be prescribed, of long-term incapacity benefit to persons over pensionable age.

1992 c. 4.

(8) Regulations under this section may provide that in transitional cases the rate of short-term incapacity benefit at the higher rate or of long-term incapacity benefit shall be calculated—

- (a) by reference to the rate of invalidity benefit, and of any relevant related allowance, addition or increase, paid or payable immediately before commencement, with such up-rating (if any) as may be provided for in accordance with the regulations (whether by applying the provisions of section 150 of the Social Security Administration Act 1992 or otherwise), and
- (b) without any increase or addition which would otherwise be payable with incapacity benefit.

1992 c. 5.

(9) If regulations make provision of the kind mentioned in subsection (8) above they may also make with respect to any additional pension element of incapacity benefit provision corresponding to any of the provisions in force before commencement with respect to the additional pension element of invalidity pension.

(10) Regulations under this section may provide, in relation to transitional cases where the rate of incapacity benefit falls to be calculated by reference to the rate of dependency allowance paid or payable before commencement, that any old saving provisions shall have effect subject to the regulations or shall cease to have effect in accordance with the regulations.

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Ss. 4-7

1992 c. 4. For the purposes of this subsection—
 “dependency allowance” means an allowance of the kind provided for in Part IV of the Social Security Contributions and Benefits Act 1992, and
 “old saving provisions” means provisions of any description, including administrative provisions, in connection with a previous change affecting entitlement to or the amount of dependency allowances, preserving a person’s position in any respect.

(11) Section 175(2) to (4) of the Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

(12) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

(13) A statutory instrument—
 (a) which contains (whether alone or with other provisions) any regulations made under this section, and
 (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by resolution of each House of Parliament,
 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Test of incapacity for work

Test of incapacity for work. **5.**amends 1992 c. 4, see Annex 1, page 2.3821.

Test of incapacity for work; supplementary provisions. **6.** (1) and (2) makes textual amendments, see Annex 1, page 2.3821.

6.—(3) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations made under any of the following provisions shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House—

- 1992 c. 4. (a) in the Social Security Contributions and Benefits Act 1992—
 section 171A(2), (3), or (4),
 section 171B(4)(d), (6), (7) or (8),
 section 171C(2) or (3),
 section 171D,
 section 171E(1), (2) or (3), or
 section 171G(1)(c);
- 1992 c. 5. (b) in the Social Security Administration Act 1992, section 61A(2), (3) or (4).]

Power to provide for the transition to the new test of incapacity for work. **7.—**(1) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient for the purposes of, or in connection with, the transition to the test of incapacity for work provided for by sections 5 and 6 above.

Nothing in the following provisions of this section shall be construed as restricting the generality of that power.

(2) In this section—
 “commencement” means the commencement of those sections; and
 “prescribed” means prescribed by regulations under this section.

(3) Regulations under this section may provide—

- (a) that days of incapacity for work before commencement, and such other days as may be prescribed, shall be taken into account for the purposes of section 171B(3) of the Social Security Contributions and Benefits Act 1992 (period after which the all work test applies);
- (b) that a person’s continued enjoyment after commencement of any allowance or other advantage under any provision for the purposes of which Part XIIA of the Social Security Contributions and Benefits Act 1992 applies shall, except as may be prescribed, be subject to satisfying the test of incapacity for work under that Part; and
- (c) for the determination in accordance with that Part of the question whether the person is incapable of work.

1992 c. 4.

(4) Section 175(2) to (4) of the Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

(5) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

(6) A statutory instrument—

- (a) which contains (whether alone or with other provisions) any regulations made under this section, and
- (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of resolution of either House of Parliament.

Statutory sick pay

8.—(1) In section 157(1) of the Social Security Contributions and Benefits Act 1992 (statutory sick pay: rates of payment), for the words following “at the weekly rate of” substitute “£52.50”.

Rate of statutory sick pay.

See s. 157(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) (earlier in this volume) for rate as subsequently updated.

(2) Any order under section 150 of the Social Security Administration Act 1992 (up-rating orders) made by the Secretary of State before the commencement of this section shall include provision making such increase (if any) in the sum specified in the amendment made by subsection (1) above as the amount of statutory sick pay as is necessary to make that sum equal to the higher rate of statutory sick pay payable after the order comes into force.

1992 c. 5.

8. (3) and (4)amends 1992 c. 4, see Annex 1, page 2.3821.

Other amendments

9. [1makes textual amendments, see Annex 1, page 2.3821.]

Severe disablement allowance.

10.amends 1992 c. 4, see Annex 1, page 2.3821.

Disability working allowance.

General

11.—(1) The enactments mentioned in Schedule 1 have effect subject to the amendments specified there which are consequential on the provisions of this Act.

Consequential amendments and repeals.

¹ S. 9(1) to (3) repealed (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 88 of the Welfare Reform and Pensions Act 1999 (c. 30).

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Ss. 11-13

1992 c. 4.

Part I contains amendments of the Social Security Contributions and Benefits Act 1992; and

1992 c. 5.

Part II contains amendments of the Social Security Administration Act 1992 and certain other enactments.

(2) The enactments mentioned in Schedule 2 are repealed to the extent specified.

General power to make transitional and consequential provision.

12.—(1) The Secretary of State may by regulations make such transitional provision, and such consequential provision or savings, as appear to him to be necessary or expedient in preparation for or in connection with the coming into force of any provision of this Act or the operation of any enactment repealed or amended by any such provision during any period when the repeal or amendment is not wholly in force.

(2) The power conferred by subsection (1) above is not exercisable in respect of any matter for which provision may be made under section 4 (power to provide for transition to incapacity benefit) or section 7 (power to provide for the transition to new test of incapacity for work).

1992 c. 4.

(3) Section 175(2) to (4) of the Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

(4) A statutory instrument—

(a) which contains (whether alone or with other provisions) any regulations made under this section, and

(b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Saving for existing enactments.

13.—(1) The amendments of the Social Security Contributions and Benefits Act 1992 made by this Act shall be treated as repealing and re-enacting with modifications the provisions of that Act relating to incapacity for work, so that, subject to any amendment, repeal or revocation—

(a) any reference in any enactment to any such provision shall be construed as a reference to the corresponding new provision or, as the case may be, to the provision as amended by this Act; and

(b) subordinate legislation made under any such provision—

(i) shall continue in force and have effect as if made under the corresponding new provision or, as the case may be, the provision as amended by this Act, and

(ii) shall be construed as if originally so made.

(2) In any enactment, subject to any amendment—

(a) any reference to sickness benefit shall be construed as a reference to short-term incapacity benefit at the lower rate, and

(b) any reference to invalidity benefit or invalidity pension shall be construed as a reference to short-term incapacity benefit at the higher rate or long-term incapacity benefit.

(3) In this section “enactment” includes an enactment contained in subordinate legislation, and “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978.

1978 c. 30.

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Ss. 14-16

14. An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—

Corresponding provision for Northern Ireland.
1974 c. 2 8.

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

15. There shall be paid out of money provided by Parliament—

Expenses.

- (a) any expenses incurred by a Minister of the Crown in consequence of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

16.—(1) This Act may be cited as the Social Security (Incapacity for Work) Act 1994.

Short title, commencement and extent.

(2) The following provisions of this Act come into force on Royal Assent—
section 14 (corresponding provision for Northern Ireland),
section 15 (expenses), and
this section.

(3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions and for different purposes.

(4) Section 14 above, subsections (1) and (2) above and this subsection extend to Northern Ireland, but otherwise this Act does not extend there.

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Schs. 1-2

SCHEDULES

SCHEDULE 1

..... *makes textual amendments, see Annex 1, page 2.3821.*

SCHEDULE 2

..... *effects repeals, see Annex 1, page 2.3821.*

Social Security (Incapacity for Work) Act 1994
LIST OF OMISSIONS

The following provisions have been omitted from the text for the reasons stated:-

- s. 1(1) inserts (13.4.95) S. 30A into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 1(2) amends (13.4.95) para. 2 of Sch. 3 to S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 2(1) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) s. 30B into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 2(2) amends (13.4.95) Part I of Sch. 4 to S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 2(3) inserts (18.11.94) s. 150(1)(aa) into S.S. Admin. Act 1992 (c. 5), and amends (18.11.94) s. 150(3)(b) *ibid.*
- s. 2(4) substitutes (13.4.95) s. 80(2)(b) and (c) of S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 2(5) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) s. 86A of S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 2(6) amends (13.4.95) Part IV of Sch. 4 to S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 3(1) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) ss. 30C–30E into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 3(2) adds para. 2(7) to Sch. 3 to S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 5 inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) ss. 171A–171C into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 6(1) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) ss. 171D–171G into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 6(2) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) s. 61A into S.S. Administration Act 1992 (c. 5)
- s. 8(3) substitutes (6.4.95) s. 157(2)(a) of S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 8(4) amends (6.4.95) s. 155(4) of S.S. Contributions and Benefits Act 1992 (c. 4). (Specified amendment of s. 158(2)(b) *ibid.* did not come into force – see art. 5(a) of S.I. 1995/512)

SOCIAL SECURITY (INCAPACITY FOR WORK) ACT 1994 (c. 18)

Annex 1

- [¹s. 9(1) introduces amendments to s. 68 of S.S. Contributions and Benefits Act 1992 (c. 4) made by s. 9(2) and (3)
- s. 9(2) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) s. 68(10A) into S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 9(3) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) s. 68(11)(cc) into S.S. Contributions and Benefits Act 1992 (c. 4)]
- s. 9(4) amends (18.11.94) s. 150(3)(a) of S.S. Admin. Act 1992 (c. 5)
- s. 10(1) introduces amendments to s. 129 of S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 10(2) amends (13.4.95) s. 129(1) of S.S. Contributions and Benefits Act 1992 (c. 4)
- s. 10(3) inserts (18.11.94 for regulation-making purposes, 13.4.95 for other purposes) subsections (2A) and (2B) into s. 129 of S.S. Contributions and Benefits Act 1992 (c. 4)
- Sch. 1 makes textual amendments to:–
S.S. Contributions and Benefits Act 1992 (c. 4)*
S.S. Administration Act 1992 (c. 5)
Employment Protection (Consolidation) Act 1978 (c. 44)
Criminal Justice Act 1991 (c. 53)
Pension Schemes Act 1993 (c. 48)

[¹* In para. 18 of Sch. 1 (amending s. 68 of the S.S. Contributions and Benefits Act 1992), a new sub-para. (6), requiring the omission of subsections (12) and (13) of the said s. 68, was substituted for former sub-paras. (6) and (7) by reg. 3(2) of S.I. 1994/2556.]

Paras. 20 and 21 of Sch 1 (amending ss. 83 and 84 of the S.S. Conts. & Bens. Act 1992) are to be repealed (6.4.10) by Pensions Act 1995 (c. 26), Sch. 7, Pt. II.

Those amendments in Sch. 1 which were superseded by the Jobseekers Act 1995 (c. 18) namely paras. 4-6, 19, 21, 24(2) and (3), 30, 35-37, 39(b), 41(3), 45(2) and 47), were repealed (7.10.96) by Sch. 3 to that Act.

Para. 40 of Sch. repealed (6.4.12) by Pensions Act 2011 (c. 19), Sch. 1, para. 4(a)

- [¹Sch. 2 repeals specified statutory provisions.]

¹ S. 9(1) to (3), para. 18 of Sch. 1 and entry in Sch. 2 repealed (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 88 of the Welfare Reform and Pensions Act 1990 (c. 30).

Social Security (Incapacity for Work) Act 1994
COMMENCEMENT DATES

(a) Details of Commencement Order

<i>S.I. No.</i>	<i>Title of Order</i>	<i>Page no. in this work</i>
1994/2926	Social Security (Incapacity for Work) Act 1994 (Commencement) Order 1994	3.801 (vol. 3)

(b) Dates on which provisions of the S.S. (Incapacity for Work) Act 1994 came into force

<i>Section</i>	<i>Date of Commencement</i>	<i>Commencement Order, etc.</i>
1	13. 4.95	S.I. 1994/2926
2(1)	13. 4.95*	S.I. 1994/2926
2(2)	13. 4.95	S.I. 1994/2926
2(3)	18.11.94	S.I. 1994/2926
2(4)	13. 4.95	S.I. 1994/2926
2(5)	13. 4.95*	S.I. 1994/2926
2(6)	13. 4.95	S.I. 1994/2926
2(7)	18.11.94	S.I. 1994/2926
3(1)	13. 4.95*	S.I. 1994/2926
3(2)	13. 4.95	S.I. 1994/2926
4	18.11.94	S.I. 1994/2926
5 and 6	13. 4.95*	S.I. 1994/2926
7	18.11.94	S.I. 1994/2926
8(1)	6. 4.95	S.I. 1994/2926
8(2)	18.11.94	S.I. 1994/2926
8(3) and (4)	6. 4.95	S.I. 1994/2926
9(1)–(3)	13. 4.95*	S.I. 1994/2926
9(4)	18.11.94	S.I. 1994/2926
10(1)	13. 4.95*	S.I. 1994/2926
10(2)	13. 4.95	S.I. 1994/2926
10(3)	13. 4.95*	S.I. 1994/2926
11	13. 4.95	S.I. 1994/2926
12	18.11.94	S.I. 1994/2926
13	13. 4.95	S.I. 1994/2926
14–16	5. 7.94	Royal Assent
Schs. 1 and 2	13. 4.95	S.I. 1994/2926

* 13.4.95 generally, but 18.11.94 for regulation-making purposes.

