1995 No. 829

SOCIAL SECURITY

The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995

Made - - - -	*21st March 1995*
Laid before Parliament	*23rd March 1995*
Coming into force -	*13th April 1995*

The Secretary of State for Social Security, in exercise of powers conferred by section 86A(1) of the Social Security Contributions and Benefits Act 1992**(a)**, section 12(1) of the Social Security (Incapacity for Work) Act 1994**(b)** and of all other powers enabling him in that behalf by this instrument, which is made before the end of the period of 6 months from the coming into force of those enactments**(c)** and with the consent of the Treasury to regulation 22**(d)**, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995 and shall come into force on 13th April 1995.

(2) In these Regulations–

"the Adjudication Regulations" means the Social Security (Adjudication) Regulations 1986**(e)**;

"the Airmen's Benefits Regulations" means the Social Security (Airmen's Benefits) Regulations 1975**(f)**;

"the appointed day" means 13th April 1995;

"the Computation of Earnings Regulations" means the Social Security Benefit (Computation of Earnings) Regulations 2978**(g)**;

(a) 1992 c.4. Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994 (c.18).

(b) 1994 c.18.

(c) *See* section 173(5)(a) of the Social Security Administration Act 1992 (c.5). This provides that regulations made before the end of 6 months from the coming into force of the enactment under which they are made are not required to be referred to the Social Security Advisory Committee.

(d) *See* section 189(8) of the Social Security Administration Act 1992 (c.5).

(e) S.I. 1986/2218.

(f) S.I. 1975/494.

(g) S.I. 1978/1698. The relevant amending instruments are S.I. 1979/359, 1984/1303, 1984/1697, 1989/1642, 1989/1690, 1990/2208 and 1992/300.

"the Contributions Regulations" means the Social Security (Contributions) Regulations 1979 **(a)**;

"the Credits Regulations" means the Social Security (Credits) Regulations 1975**(b)**;

"the General Benefit Regulations" means the Social Security (General Benefit) Regulations 1982**(c)**;

"the Graduated Retirement Benefit (No. 2) Regulations" means the Social Security (Graduated Retirement Benefit)(No.2) Regulations 1978**(d)**;

"the Hospital In-Patients Regulations" means the Social Security (Hospital In-Patients) Regulations 1975**(e)**;

"the Increases for Dependants Regulations" means the Social Security (Incapacity Benefit—Increases for Dependants) Regulations 1994**(f)**;

"the Invalid Care Allowance Regulations" means the Social Security (Invalid Care Allowance) Regulations 1976**(g)**;

"the Mariners' Benefits Regulations" means the Social Security (Mariners' Benefits) Regulations 1975**(h)**;

"the Married Women and Widows Special Provisions Regulations" means the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974**(i)**;

"the Overlapping Benefits Regulations" means the Social Security (Overlapping Benefits) Regulations 1979**(j)**;

"the Payments on account, Overpayments and Recovery Regulations" means the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988**(k)**;

"the Persons Abroad Regulations" means the Social Security Benefit (Persons Abroad) Regulations 1975**(l)**;

"the Persons Residing Together Regulations" means the Social Security Benefit (Persons Residing Together) Regulations 1977**(m)**;

"the Recoupment Regulations" means the Social Security (Recoupment) Regulations 1990**(n)**;

"the Redundant Mineworkers Payments Orders" means the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1983**(o)**, the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1984**(p)** and the Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1986**(q)**;

(a) S.I. 1979/591. The relevant amending instruments are S.I. 1987/413, 1987/2111 and 1993/2094.
(b) S.I. 1975/556. The relevant amending instruments are S.I. 1977/788, 1978/409, 1982/96, 1983/197, 1987/414, 1987/687, 1988/1545 and 1991/387.
(c) S.I. 1982/1408..
(d) S.I. 1978/393.
(e) S.I. 1975/555. The relevant amending instruments are S.I. 1983/186, 1984/1303, 1984/1699 and 1987/31.
(f) S.I. 1994/2945.
(g) S.I. 1976/409.
(h) S.I. 1975/529. The relevant amending instruments are S.I. 1977/788, 1982/96, 1987/414, 1988/1545 and 1989/627.
(i) S.I. 1974/2010. The relevant amending instruments are S.I. 1978/508 and 1989/893.
(j) S.I. 1979/597. The relevant amending instruments are S.I. 1980/1927, 1982/1173, 1983/186, 1984/1303, 1991/387, 1991/2742 and 1992/3194.
(k) S.I. 1988/664. The relevant amending instruments are S.I. 1988/688, 1988/1725, 1989/136 and 1991/2742.
(l) S.I. 1975/563. The relevant amending instruments are S.I. 1983/186, 1984/1303, 1986/1545 and 1994/268.
(m) S.I. 1977/956. The relevant amending instruments are S.I. 1983/186 and 1984/1303.
(n) S.I. 1990/322. The relevant amending instruments are S.I. 1991/2742 and 1994/730.
(o) S.I. 1983/506. The relevant amending instrument is S.I. 1989/1201.
(p) S.I. 1984/457. The relevant amending instrument is S.I. 1989/1201.
(q) S.I. 1986/625. The relevant amending instrument is S.I. 1989/1201.

"the Social Fund (Recovery) Regulations" means the Social Fund (Recovery by Deductions from Benefits) Regulations 1988**(a)**;

"the Statutory Maternity Pay Regulations" means the Statutory Maternity Pay (General) Regulations 1986**(b)**;

"the Statutory Sick Pay Regulations" means the Statutory Sick Pay (General) Regulations 1982**(c)**;

"the Unemployment, Sickness and Invalidity Benefit Regulations" means the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983**(d)**;

"the Widow's and Widower's Invalidity Pensions Regulations" means the Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978**(e)**.

[Reg. 2 amends reg. 3 of S.I. 1974/2010.]

[Reg. 3 amends reg. 2 of S.I. 1975/494.]

[Reg. 4(1) introduces amendments to S.I. 1975/529.]

[Reg. 4(2) amends reg. 4 of S.I. 1975/529.]

[Reg. 4(3) amends reg. 5 of S.I. 1975/529.]

[Reg. 4(4) amends reg. 6(2) of S.I. 1975/529.]

[Reg. 5(1) introduces amendments to S.I. 1975/555.]

[Reg. 5(2) inserts para. 5(ca) into Sch. 1 to S.I. 1975/555.]

[Reg. 5(3) amends Sch.2 to S.I. 1975/555.]

[Reg. 6(1) introduces amendments to S.I. 1975/556.]

[Reg. 6(2) amends reg. 2(1) of S.I. 1975/556.]

[Reg. 6(3) amends reg. 8(1) of S.I. 1975/556.]

[Reg. 6(4)(a) amends reg. 9(5) of S.I. 1975/556.]

[Reg. 6(4)(b) amends reg. 9(8) of S.I. 1975/556.]

[Reg. 6(4)(c) amends reg. 9(9) of S.I. 1975/556.]

[Reg. 7 amends reg. 2 of S.I. 1975/563.]

[Reg. 8(1) introduces amendments to S.I. 1976/409.]

[Reg. 8(2) amends reg. 14 of S.I. 1976/409.]

[Reg. 8(3) substitutes Sch. 1 to S.I. 1975/409.]

[Reg. 9(1) introduces amendments to S.I. 1978/529.]

[Reg.9(2) amends reg. 1(2) of S.I. 1978/529.]

[Reg.9(3) revokes reg. 2 of S.I. 1978/529.]

[Reg. 9(4) substitutes reg. 3 of S.I. 1978/529.]

[Reg. 9(5) substitutes reg. 4 of S.I. 1978/529.]

[Reg. 10 amends reg. 2(2)(a) of S.I. 1977/956.]

(a) S.I. 1988/35.
(b) S.I. 1986/1960. The relevant amending instruments are S.I. 1988/532 and 1990/622.
(c) S.I. 1982/894.
(d) S.I. 1983/1598. The relevant amending instruments are S.I. 1986/484, 1988/689, 1988/1674, 1989/872, 1989/1324, 1989/1642, 1990/1487, 1992/285, 1992/585 and 1994/1101.
(e) S.I. 1978/529.

[Reg. 11 amends S.I. 1978/393]

[Reg. 12 deleted by S.I. 1996/2745 as from 25.11.96.]

[Reg. 13 revoked by regulation 157 of S.I. 2001/1004 as from 6.4.01]

Amendment of the Overlapping Benefits Regulations and Savings

14.—(1) The Overlapping Benefits Regulations shall be amended in accordance with the following provisions of this regulation.

(2) Regulation 3 is hereby revoked.

[Reg. 14(3) amends reg. 4 of S.I. 1979/597.]

(4) Subject to the provisions of paragraph (11) below, in paragraph (5)(b) of regulation 6 (adjustments of personal benefit under Chapters I and II of Part II of the Act by reference to industrial injuries benefits and benefits not under the Act, and adjustments of industrial injuries benefits)–

(a) the words "or invalidity benefit" shall be omitted;

(b) head (i) shall be omitted.

[Reg. 14(5) amends reg. 9 of S.I. 1979/597.]

[Reg. 14(6) amends reg. 10 of S.I. 1979/597.]

[Reg. 14(7) amends reg. 14 of S.I. 1979/597.]

[Reg. 14(8) amends Sch. 1 to S.I. 1979/597.]

(9) Where before the appointed day regulation 3 of the Overlapping Benefits Regulations (special provisions for widow's benefit and invalidity pension) applied to a widow; and–

(a) on or after that day she remains entitled to either a widowed mother's allowance or a widow's pension; and

(b) she is either a transitional case for the purposes of Part IV of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995**(a)** or, has an award of long-term incapacity benefit by virtue of regulation 19 or 20 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995; and

(c) she is under pensionable age,

regulation 3 of the Overlapping Benefits Regulations shall continue to apply to her as if the revocation made by paragraph (2) above had not been made subject to the modifications made in paragraph (10) below.

(10) Where paragraph (9) applies regulation 3 of the Overlapping Benefits

(a) S.I. 1995/301.

Regulations shall be modified so that–

(a) for the words "invalidity pension" in each place where they occur there shall be substituted the words "long-term incapacity benefit"; and

(b) for sub-paragraph (a) of paragraph (2) there shall be substituted the following sub-paragraph–

"(a) and amount equal to either the basic rate of long-term incapacity benefit referred to in regulation 18(1)(a) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 paid in a transitional case or an award of widow's basic pension calculated by reference to section 44(1) of the Contributions and Benefits Act or an amount equal to the greater of them";

(c) in sub-paragraph (b) of paragraph (2) for the words "two additional pensions" there shall be substituted the words "incapacity benefit payable at the additional rate in accordance with regulation 18(1)(b) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 and widow's pension determined in accordance with section 44(3)(b) of the Contributions and Benefits Act".

(11) Notwithstanding the amendment made by paragraph (4) above, where in a transitional case long-term incapacity benefit falls to be adjusted by reference to a benefit within column (2) of Schedule 1 to the Overlapping Benefits Regulations, that benefit shall be adjusted on or after the appointed day as if the words "or invalidity benefit" had not been omitted from regulation 6 of those Regulations.

[Reg. 15 amends reg. 15(1) of S.I. 1982/894.]

[Reg. 16 amends reg. 2(2) of S.I. 1982/1408.]

[Reg. 17(1) introduces amendments to S.I. 1983/1598.]

[Reg. 17(2) amends reg. 1(2) of S.I. 1983/1598.]

[Reg. 17(3) deleted by sch. to S.I. 1996/1345 as from 7.10.96.]

[Reg. 17(4) revokes reg. 3 of S.I. 1983/1598.]

[Reg 17 (5) - (8) deleted by sch. to S.I. 1996/1345 as from 7.10.96.]

[Reg. 17(9) revokes regs. 7A, 8 and 8A of S.I. 1983/1598.]

[Reg. 17 (10) deleted by Sch. to S.I. 1996/1345 as from 7.10.96.]

[Reg. 17(11) revokes regs. 15 and 17 of S.I. 1983/1598.]

[Reg. 17(12) amends reg. 20 of S.I. 1983/1598.]

[Reg. 17(13) revokes regs. 29-32 of S.I. 1983/1598.]

[Reg. 17(14) substitutes part IVA of S.I. 1983/1598 (comprising regs. 32A and 32B) for former Part IV (comprising former regs. 29-32].

[Reg. 18(1) introduces amendments to S.I. 1986/1960.]

[Reg. 18(2) amends reg. 21A of S.I. 1986/1960.]

[Reg. 18(3) amends reg. 25A of S.I. 1986/1960.]

[Reg. 19 amending S.I. 1986/2218, revoked by Sch. 4 to S.I. 1995/1801 as from 10.8.95.]

[Reg. 20 amends reg. 3 of S.I. 1988/35.]

[Reg. 21(1) introduces amendments to S.I. 1988/664.]

[Reg. 21(2) amends reg. 1(2) of S.I. 1988/664.]

[Reg. 21(3) amends reg. 15(2) of S.I. 1988/664.]

[Reg. 21(4) amends reg. 16(8) of S.I. 1988/664.]

Amendment of the Recoupment Regulations

22. In regulation 2(1) of the Recoupment Regulations (relevant benefits) after sub-paragraph (c) there shall be inserted the following sub-paragraph–

"(ca) incapacity benefit;".

[Reg. 23 inserts Part V (reg. 16) into S.I. 1994/2945.]

Amendment of the Redundant Mineworkers Payments Orders

24.—(1) The Schedules to the Redundant Mineworkers Payments Orders shall each be amended in accordance with the following provisions of this regulation.

(2) In article 1 after the definition of "house" there shall be inserted the following definition–

""incapacity benefit" means incapacity benefit payable under sections 30A, 40 or 41 of the Social Security Contributions and Benefits Act 1992 and by virtue of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995".

(3) In article 9 (additional weekly benefits payable)–

(a) for paragraph (1)(b) there shall be substituted the following paragraph–

"(b) on any day not entitled to incapacity benefit for either of the reasons specified in paragraph (2) below";

(b) in paragraph (3) for the words "sickness benefit, invalidity benefit" there shall be substituted the words "incapacity benefit".

PART III

TRANSITIONAL AND SAVINGS PROVISIONS

Claim or question concerning sickness or invalidity benefit to be determined after "the appointed day"

25. For the purpose of determining any claim or question concerning sickness or invalidity benefit which falls to be determined on or after the appointed day, the Contributions and Benefits Act, the Administration Act and any regulations made under them (other than the Social Security (Claims and Payments) Regulations 1987**(a)**) shall be construed as if section 13(2) of the Social Security (Incapacity for Work) Act 1994 had not been enacted.

(a) S.I. 1987/1968.

Recoupment of sickness or invalidity benefit

26. Where a determination is made on or after the appointed day concerning the recoupment of sickness or invalidity benefit, regulation 2 of the Recoupment Regulations shall be read as if the references to incapacity benefit in that regulation were references to sickness or invalidity benefit.

Reviews in respect of sickness and invalidity benefit

27. Where a decision relating to sickness or invalidity benefit is reviewed on or after the appointed day, regulations 65(1)(b) and (3)(a)(ii) of the Adjudication Regulations shall be read as if the references to incapacity benefit and short-term incapacity benefit in those regulations were references to invalidity benefit or sickness benefit.

Saving in respect of Credits

28. For the purpose of determining whether a person is entitled to be credited with earnings in respect of any period before the appointed day, regulation 9 of the Credits Regulations shall continue to have effect as if the amendments to those Regulations made by regulation 6 of these Regulations had not come into force.

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

William Hague
Minister of State,
Department of Social Security

20th March 1995

We consent,

Derek Conway
Andrew Mitchell
Two of the Lords Commissioners
of Her Majesty's Treasury

21st March 1995

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments and transitional provisions due to the replacement of sickness benefit and invalidity benefit by incapacity benefit which is introduced by the Social Security (Incapacity for Work) Act 1994.

Part I contains commencement and interpretation provisions.

Part II amends various social security regulations so as to replace references to sickness and invalidity benefit with references to incapacity benefit.

In addition–

Regulation 5 amends the Social Security (Hospital In-Patients) Regulations 1975 ("the Hospital In-Patients Regulations") so that a beneficiary will be regarded as having a dependant for the purposes of the Hospital In-Patients Regulations if he either satisfies a condition for an increase in benefit in respect of an adult dependant or would have satisfied such a condition had the conditions for increases for dependants in respect of sickness or invalidity benefit continued to apply after 12 April 1995.

Regulation 6 provides for the meaning of "a day of incapacity for work" in relation to credits.

Regulation 9 prescribes how Category A retirement pension shall be determined for certain widows and widowers.

Regulation 10 applies to incapacity benefit the provisions of the Social Security Benefit (Persons Residing Together) Regulations 1977 which deal with the circumstances in which a person is to be treated as residing with his or her spouse when in hospital or temporarily absent.

Regulation 11 removes references to sickness and invalidity benefit from Schedule 1 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 so that these provisions, which deal with the rate of benefit payable to those over pensionable age, apply to unemployment benefit and certain transitional payments of incapacity benefit only.

Regulation 14 amends the Social Security (Overlapping Benefits) Regulations 1979 so that (inter alia) where widow's pension is paid at a reduced rate with long-term incapacity benefit those benefits may not be adjusted by reference to each other and amends the provisions for adjustment where part-week payments or more than one benefit are adjusted and makes various other minor consequential amendments.

Regulation 17 amends the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 by omitting references to sickness benefit and invalidity benefit.

Regulation 23 provides that where a woman receives increases of benefit for a dependant spouse under the Incapacity Benefit (Transitional) Regulations 1995 such benefit will be treated in the same manner as increases of incapacity benefit made under the Social Security Contributions and Benefits Act 1992 for the purposes of claiming adult dependency increases of retirement pension.

Regulation 24 amends the Redundant Mineworkers and Concessionary Coal (Payment Schemes) Orders 1983, 1984 and 1986 to include references to incapacity benefit in those Orders.

Part III contains transitional provisions and savings relating to sickness and invalidity benefit in respect of the review of decisions, the recoupment of benefit and entitlement to credits.

These Regulations are made before the end of the period of six months from the coming into force of the Social Security (Incapacity for Work) Act 1994 and section 86A of the Social Security Contributions and Benefits Act 1992 and they are therefore, insofar as they would otherwise have required reference to the Social Security Advisory Committee, exempt from such reference by virtue of section 173(5)(a) of the Social Security Administration Act 1992 and have accordingly not been so referred.

These Regulations do not impose a charge on business.