

**1995 No.482**

**SOCIAL SECURITY**

**The Disability Working Allowance and Income  
Support (General) Amendment Regulations 1995**

*Made* - - - - - *28th February 1995*

*Laid before Parliament* *7th March 1995*

*Coming into force—*  
*for the purposes of regulations 1,*  
*3 and 4, on 11th April 1995;*  
*for the purposes of regulations 2*  
*and 5 to 20 on 13th April 1995*

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 124(1)(d)(i) and (3) < 129(2B)(b) and (c)(a) and (8), 135(1), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(b), section 12(1) of the Social Security (Incapacity for Work) Act 1994(c) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of regulations 1, 3, 4, 6, 8, 9, 15, 17 and 19(5) should not be referred to it(d), by this instrument which is otherwise made before the end of the period of 6 months beginning with the coming into force of the enactments under which it is made(e), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Disability Working Allowance and Income Support (General) Amendment Regulations 1995 and shall come into force—

- (a) for the purposes of this regulation and regulations 3 and 4, on 11th April 1995;
- (b) for the purposes of regulations 2 and 5 to 20 on 13th April 1995.

(2) Regulations 3 and 4 shall have effect in relation to any particular claimant—

- (a) except where sub-paragraph (b) applies, on 11th April 1995;
- (b) where a claimant has an award of disability working allowance which is current on 10th April 1995, on the day following the expiration of that award.

(3) Regulations 2 and 18 shall have effect in relation to any particular claimant—

- (a) except where sub-paragraph (b) applies, on 13th April 1995;

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(a) Subsection (2B) is inserted by section 10(3) of the Social Security (Incapacity for Work) Act 1994 (c.18).  
(b) 1992 c.4; section 137(1) is an interpretation provision and is cited because of the meaning assigned to the word “prescribed”.  
(c) 1994 c.18.  
(d) See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).  
(e) See section 173(5)(a) of the Social Security Administration Act 1992 (c.5).

(b) where a claimant has an award of disability working allowance which is current on 12th April 1995, on the day following the expiration of that award.

(4) Regulations 5 to 17, 19 and 20 of these Regulations shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 13th April 1995 which applies in his case.

(5) In these Regulations—

“adjudication officer” means an adjudication officer appointed under section 38 of the Social Security Administration Act 1992(a);

“benefit week” has the same meaning as in the Income Support Regulations;

“claimant” means a claimant for disability working allowance or, as the case may be, for income support;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(b);

“the Disability Working Allowance Regulations” means the Disability Working Allowance (General) Regulations 1991(c);

“the Income Support Regulations” means the Income Support (General) Regulations 1987(d).

[Regulation 2 inserts regs. 7A and 7B into S.I. 1991/2887 as from 13.4.95.]

[Regulation 3 amends reg. 51 of S.I. 1991/2887 as from 11.4.95.]

[Regulation 4 amends Sch. 5 to S.I. 1991/2887 as from 11.4.95.]

[Regulation 5 amends reg. 4 of S.I. 1987/1967 as from 13.4.95.]

[Regulation 6 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 7 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 8 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 9 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 10 amends reg. 31(2) of S.I. 1987/1967 as from 13.4.95.]

[Regulation 11 amends reg. 32(4) of S.I. 1987/1967 as from 13.4.95.]

[Regulation 12 amends reg. 73(3) of S.I. 1987/1967 as from 13.4.95.]

[Regulation 13 amends reg. 75 of S.I. 1987/1967 as from 13.4.95.]

[Regulation 14 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 15 revoked by Sch. 3 to S.I. 1996/206 as from 7.10.96.]

[Regulation 16 and 17 amend para. 12 of Sch. 2 to S.I. 1987/1967 as from 13.4.95.]

#### **Transitional provisions with respect to the Disability Working Allowance Regulations**

**18.**—(1) Where invalidity pension was payable to the claimant for one or more of the 56 days immediately preceding the date on which the claim for

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(a) 1992 c.5.

(b) 1992 c.4.

(c) S.I. 1991/2887.

(d) S.I. 1987/1967.

disability working allowance was made or was treated as made, the payments shall be treated for the purposes of section 129(2)(a)(i)(a) of the Contributions and Benefits Act as payments of long-term incapacity benefit.

(2) Any day on which a claimant was entitled to invalidity pension under sections 33, 40 or 41 of the Contributions and Benefits Act as in force on 12th April 1995 shall be treated for the purposes of section 129(2A)(b)(b) of the Contributions and Benefits Act as a day on which he was entitled to long-term incapacity benefit.

### Transitional provisions with respect to the Income Support Regulations

**19.—**(1) Sickness benefit shall be a qualifying benefit for the purposes of regulation 9(2)(a)(i) of the Income Support Regulations, and for the purpose “sickness benefit” means sickness benefit under section 31 of the Social Security Contributions and Benefits Act 1992 as in force on 12th April 1995.

(2) Where the disability premium was applicable to a claimant on 12th April 1995 by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support Regulations as in force on that date, the disability premium shall continue to be applicable to that claimant for so long as paragraph 12(1)(b)(i) of that Schedule applies to him.

(3) Paragraph (2) shall not apply to a claimant to whom paragraph 12(1)(b)(i) of Schedule 2 to the Income Support Regulations has ceased to apply for a period of more than 56 continuous days.

(4) Where on 12th April 1995 paragraph 5 of Schedule 1 to the Income Support Regulations (persons incapable of work) as in force on that date applied to a claimant, but the disability premium was not applicable to him, that claimant shall be treated for the purposes of paragraph 12(1) of Schedule 2 to the Income Support Regulations as if, throughout the period that paragraph 5 of Schedule 1 had applied to him, paragraph 12(1)(b)(i) of Schedule 2 applied to him.

(5) ►Where it is determined on or after 13th April 1995◄ that a claimant fails to satisfy the incapacity for work test, in accordance with regulations made under section 171C of the Contributions and Benefits Act(c) (the all work test), on its first application to the claimant concerned, and the claimant, immediately prior to ►13th April 1995◄, was either—

- (a) incapable of work and had been so for a continuous period of 28 weeks in circumstances to which paragraph 5 of Schedule 1 of the Income Support Regulations refers (persons incapable of work not required to be available for employment); or
- (b) in receipt of invalidity benefit or severe disablement allowance,

then, in a case in which either regulations 8(2A) or 11(2A) of the Income Support Regulations applies (persons not required to be available for employment and registration for employment), notwithstanding regulation 22(1A) and (5A) of the Income Support Regulations (reductions in applicable amounts), the amount of any income support to which the claimant is entitled shall be calculated in accordance with regulation 17 of those Regulations.

►(6) Where—

- (a) a determination of the amount of a person’s benefit has been made in a case to which paragraph (5) of this regulation, as originally made, had effect; and

Words substituted in reg. 19(5) by Sch. 11 of S.I. 1999/2422 as from 6.9.99.

Words substituted for “that date” in reg. 19(5) by reg. 8(2)(a) of S.I. 1995/2303 as from 2.10.95.

Reg. 19(6) added by reg. 8(2)(b) of S.I. 1995/2303 as from 2.10.95.

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(a) Section 129(2)(a)(i) of the Social Security Contributions and Benefits Act 1992 is amended by the Social Security (Incapacity for Work) Act 1994 (c.18), Schedule 1 paragraph 32.  
(b) Subsection (2A) is inserted by section 10(3) of the Social Security (Incapacity for Work) Act 1994 (c.18).  
(c) Section 171C was inserted in the Contributions and Benefits Act by section 5 of the Social Security (Incapacity for Work) Act 1994 (c.18).

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- (b) an appeal to which regulation 8(2A) or 11(2A) of the Income Support Regulations) (persons not required to be available or registered for employment) refers, remains outstanding on 2nd October 1995;

the amount of any benefit to which he is entitled shall continue to be determined under paragraph (5), as originally made, until the determination of the appeal.◀

**Savings with respect to the Income Support Regulations**

20.—(1) Where a person was not required to be available for employment on 12th April 1995 by virtue of regulation 8(2) of the Income Support Regulations as in force on that date, that regulation shall continue to apply in that person's case as if regulation 6 of these Regulations had not been made.

(2) Where a claimant was not required to register for employment on 12th April 1995 by virtue of regulation 11(2) of the Income Support Regulations as in force on that date, that regulation shall continue to apply in that claimant's case as if regulation 8 of these Regulations had not been made.

(3) Where a claimant appeals against a decision of an adjudication officer that he is not incapable of work, and that decision was made on or before 12th April 1995, regulations 8 and 11 of the Income Support Regulations shall apply in that claimant's case as if these Regulations had not been made.

(4) Where the higher pensioner premium was applicable to a claimant on, or at any time during the 8 weeks immediately preceding, 12th April 1995 by virtue of paragraph 12(1)(c)(i) of Schedule 2 to the Income Support Regulations as in force on that date, paragraph 12 of that Schedule shall continue to apply in that claimant's case as if regulation 16 of these Regulations had not been made.

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

28th February 1995

*Roger Evans*  
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 amend the Disability Working Allowance (General) Regulations 1991 (S.I. 1991/2887) and the Income Support (General) Regulations 1987 (S.I. 1987/1967) and are in part consequential on the coming into force of the Social Security (Incapacity for Work) Act 1994, which replaces sickness and invalidity benefits with incapacity benefit, and provides for a new test of incapacity for work.

The Disability Working Allowance (General) Regulations are amended to—  
further define training for work and to list days which are to be disregarded in establishing whether a person was engaged in a period of training for work (regulation 2);  
provide an additional allowance in respect of a disabled child in the maximum disability working allowance (regulations 3 and 4); and  
make transitional arrangements consequential on the abolition of invalidity pension and the introduction of incapacity benefit (regulation 18).

The Income Support (General) Regulations are amended to—

- provide that a claimant may be entitled to income support whilst absent from Great Britain if he had been incapable of work for 364 days before the absence began, or 196 days in the case of a claimant who is terminally ill or who is entitled to the highest rate of the care component of disability living allowance, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 5);
- provide that a claimant who has failed the incapacity for work test and is appealing against that decision is not required to be available for work or to register for employment, but that a claimant in these circumstances who has failed the “all-work” test will have the personal allowance element of his applicable amount reduced by 20 per cent (regulations 6, 8 and 9);
- provide that a person is exempt from the requirement to be available for work where he is incapable of work or where he fails the incapacity test solely on grounds of misconduct or similar matters (regulation 14);
- provide that a student may be entitled to income support if his applicable amount includes the disability premium or severe disability premium, or if he has been incapable of work for 196 days, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 15);
- extend the qualifying period for the disability premium on ground of incapacity for work from 28 weeks to 364 days, except for claimants who are terminally ill, and they provide that the qualifying period may be broken by gaps of up to 56 days; they also permit the disability premium to be excluded from the applicable amount in respect of any period during which a claimant fails the incapacity test on grounds of misconduct or similar matters (regulations 16 and 17); and
- make additional minor consequential and transitional amendments, and savings (regulations 7, 10 to 13, 19 and 20).

Regulations 2 and 18 of these Regulations are made under section 129(2B) of the Social Security Contributions and Benefits Act 1992 and section 12(1) of the Social Security (Incapacity for Work) Act 1994 respectively and regulations 5, 7, 10 to 14, 16, 19(1) to (4) and 20 are made under section 12 of the Social Security (Incapacity for Work) Act 1994, and are made before the end of the period of six months beginning with the coming into force of that provision. Accordingly they are exempted by section 173(5)(a) of the Social Security Administration Act 1992 from reference to the Social Security Advisory Committee and have not been so referred.

An assessment of the cost to business of applying these Regulations in so far as they relate to Disability Working Allowance has been placed in the Libraries of both Houses of Parliament. Copies can be obtained by post from: DSS Deregulation Unit, The Adelphi, John Adam Street, London, WC2N 6HT.

