



Statutory Document No. 123/95

The Social Security Act 1982

THE SOCIAL SECURITY LEGISLATION (APPLICATION) (NO. 4) ORDER 1995

Approved by Tynwald 16 May 1995

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 1982(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Social Security Legislation (Application) (No. 4) Order 1995 and shall, subject to section 1(6) of the Social Security Act 1982, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall come into force or be deemed to have come into force as the case may be, on the same day as that provision came into force in Great Britain.

Interpretation

2. (1) In this Order "the applied legislation" means -

- (a) The Social Security (Claims and Payments) Amendment (No. 2) Regulations 1994(b);
- (b) The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994(c);
- (c) The Social Security (Incapacity Benefit) Regulations 1994(d);
- (d) The Social Security (Severe Disablement Allowance) Amendment Regulations 1994(e);
- (e) The Social Security (Medical Evidence) Amendment Regulations 1994(f);
- (f) The Social Security (Incapacity for Work) (General) Regulations 1995(g);
- (g) The Social Security (Incapacity Benefit) (Transitional) Regulations 1995(h);

(a) 1982 c.9; (b) S.I. 1994/2943; (c) S.I. 1994/2945; (d) S.I. 1994/2946; (e) S.I. 1994/2947; (f) S.I. 1994/2975; (g) S.I. 1995/311; (h) S.I. 1995/310.

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(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 1982, shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedules to this Order, shall apply to the Island as part of the law of the Island.

SCHEDULE 1

This Schedule sets out the text of the Social Security (Claims and Payments) Amendment (No. 2) Regulations 1994 (S.I. 1994/2943) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1994 No. 2943 (as applied)

SOCIAL SECURITY

The Social Security (Claims and Payments) Amendment (No. 2) Regulations 1994

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Claims and Payments) Amendment (No.2) Regulations 1994 and shall come into force on 13th April 1995.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered paragraph, regulation or Schedule is a reference to the paragraph, regulation or Schedule bearing that number in the Social Security (Claims and Payments) Regulations 1987(a).

Amendment of regulation 3

2. Paragraph (f) of regulation 3 (claims not required for entitlement to benefit in certain cases) shall be omitted.

(a) S.I. 1987/1968, G.C. 106/88.

Amendment of regulation 10

3. **Omitted.**

Amendment of regulation 11

4. In regulation 11 (special provisions where it is certified that a woman is expected to be confined or where she has been confined), for the words "sickness or invalidity benefit" in both places where they occur there shall be substituted the words "incapacity benefit".

Amendment of regulation 15

5. In paragraph (5) of regulation 15 (advance notice of retirement and claim for and award of pension), for the words "sickness, invalidity" there shall be substituted the words "incapacity benefit".

Amendment of regulation 16

6. In paragraph (4) of regulation 16 (date of entitlement under an award for the purpose of payability of benefit and effective date of change of rate), for the words "sickness benefit, invalidity benefit" there shall be substituted the words "incapacity benefit".

Amendment of regulation 18

7. In paragraph (2) of regulation 18 (duration of disallowance) the words "sickness benefit, invalidity benefit or severe disablement allowance has the meaning as in paragraph 2(c) of Schedule 4 and a "continuation claim" for" shall be omitted.

Amendment of regulation 21

Omitted.

Substitution of regulation 24

9. For regulation 24 (unemployment benefit, sickness or invalidity benefit, maternity allowance and severe disablement allowance) there shall be substituted the following regulation -

"Unemployment benefit, incapacity benefit, maternity allowance and severe disablement allowance

24. (1) Unemployment benefit, incapacity benefit and severe disablement allowance shall be paid (whether in advance or arrears) at such intervals not exceeding 4 weeks as the Department may, either generally or in any particular case or class of cases, direct.

(2) Subject to regulation 21 and paragraph (3), incapacity benefit and severe disablement allowance shall be paid weekly in arrears where -

(a) immediately before 13th April 1995 a person was entitled to sickness benefit, invalidity benefit or severe disablement allowance and -

(i) in the case of severe disablement allowance, there has been no break in the entitlement to that benefit on or after that date;

Amendment of Schedule 3

11. (1) Schedule 3 (duration of disallowance) shall be amended in accordance with the following provisions of this regulation.

(2) For the words "Sickness benefit or unemployment benefit.", in column (1) and for the entry opposite those words in column (2) there shall be substituted -

"Unemployment benefit

The contribution condition in paragraph 1(2) of Schedule 3 to the Social Security Contributions and Benefits Act 1992 is not satisfied; or

although that condition is satisfied, the contribution condition in paragraph 1(3) of that Schedule is not satisfied."

(3) The words "Invalidity benefit." and "Severe disablement allowance." in column (1) and the respective entries opposite those words in column (2) shall be omitted.

Amendment of Schedule 4

12. For paragraph 2 of Schedule 4 (prescribed times for claiming benefit) there shall be substituted the following paragraph -

"2. Incapacity benefit or severe disablement allowance

The day in respect of which the claim is made and the period of 1 month immediately following it."

Amendment of Schedule 5

13. In paragraph 2 of Schedule 5 (variation of prescribed times under Schedule 4), for the words before the words "or severe disablement allowance" there shall be substituted the words -

"Incapacity benefit or severe disablement allowance claimed by hospital in-patient

2. (1) Where it is being determined whether the provisions of regulation 19(2) (good cause) have been satisfied by a person who is, or has been, an in-patient in a hospital and who makes a claim for incapacity benefit".

Amendment of Schedule 7

14. *Omitted.*

Amendment of Schedule 9

15. *Omitted.*

Amendment of Schedule 9A

16. *Omitted.*

SCHEDULE 2

This Schedule sets out the text of the Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 (S.I. 1994/2945) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1994 No. 2945 (as applied)

SOCIAL SECURITY

The Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994

PART I

General

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 and shall come into force as follows -

except for regulation 15(6)(b)(i) and (c)(i), on 13th April 1995;

regulation 15(6)(b)(i) and (c)(i), on 13th May 1995.

(2) In these Regulations -

"the Administration Act" means the Social Security Administration Act 1992(a);

"benefit week" means a period of seven days ending with the day on which the benefit is due to be paid;

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

"entitled to child benefit" includes treated as so entitled;

"parent" has the meaning that it bears for the purposes of Part IX of the Contributions and Benefits Act (child benefit);

"standard rate of increase" means the amount specified in column (3) of Part IV of Schedule 4 to the Contributions and Benefits Act which is appropriate in the case of the beneficiary.

(a) 1992 c.5; (b) 1992 c.4.

(3) In these Regulations, except where the context otherwise requires -

- (a) a reference to a numbered section is a reference to the section of the Contributions and Benefits Act which bears that number;
- (b) a reference to a numbered regulation is a reference to the regulation in these Regulations which bears that number; and
- (c) a reference in a regulation to a numbered paragraph is a reference to the paragraph in that regulation which bears that number.

Provisions as to maintenance for the purposes of increase of benefit in respect of dependants

2. (1) Subject to paragraph (2), a beneficiary shall not, for the purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit and of these Regulations, be deemed to be wholly or mainly maintaining another person unless the beneficiary -

- (a) when incapable of work, contributes towards the maintenance of that person an amount not less than the amount of increase of benefit received in respect of that person; and
- (b) when in employment, or not incapable of work, (except in a case where the dependency did not arise until after that time) contributed more than half of the actual cost of maintenance of that person.

(2) In a case where -

- (a) a person is partly maintained by each of 2 or more other persons each of whom could be entitled to an increase of benefit under the Contributions and Benefits Act in respect of that person if he were wholly or mainly maintaining that person, and
- (b) the contributions made by those other persons towards the maintenance of that person amount in the aggregate to sums which, if they were contributed by one of them, would be sufficient to satisfy the requirements of paragraph (1),

that person shall for purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit, be deemed to be wholly or mainly maintained by that one of the said other persons who -

- (i) makes the larger or largest contribution to the maintenance of that person, or
- (ii) in a case where no person makes the larger or largest contribution, is the elder or eldest of the said other persons, or
- (iii) in any case, is a person designated in that behalf by a notice in writing signed by a majority of the said other persons and addressed to the *Department*,

so long as that one of the said other persons continues to be entitled to benefit under the Contributions and Benefits Act and to satisfy the condition contained in paragraph (1)(a).

(3) A notice given under paragraph (2) and the designation contained in it may be revoked at any time by a fresh notice signed by a majority of such persons and another one of their number may be designated thereby, and accordingly the provisions of that paragraph shall apply to the one so last designated.

Allocation of contributions for a spouse or child

3. (1) Subject to the provisions of this regulation, for the purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit any sum paid by a person by way of contribution towards

- (a) the maintenance of his spouse;
- (b) the cost of providing for a relevant child; or
- (c) both that maintenance and that cost,

shall be treated for the purposes of section 81(2)(b) (conditions as to cost of providing for a child) and regulations 9 and 12 as such contributions of such respective amounts equal in the aggregate to the sum in respect of his spouse or any relevant child, as may be determined by the adjudicating authority so as to secure as large a payment as possible by way of benefit in respect of dependants.

(2) Any sum paid by way of contribution towards the maintenance of a spouse shall not be treated by virtue of this regulation as a sum paid by way of contribution towards the cost of providing for a relevant child, and any sum paid by way of contribution towards the cost of providing for a relevant child shall not be treated as a sum paid by way of contribution towards the maintenance of a spouse, unless in either case the spouse is entitled to child benefit in respect of that relevant child.

(3) In this regulation -

"adjudicating authority" means any person or body with responsibility under the Administration Act and regulations made under that Act, for the determination of claims for benefit and questions arising in connection with a claim for, or award of, or disqualification for receiving benefits;

"relevant child" means a child in respect of whom, in the period for which the sum in question is paid by a person, that person is entitled to child benefit or would have been so entitled had he contributed to the cost of providing for the child at a sufficient weekly rate.

Deeming abated benefit to be a contribution for the maintenance of child or adult dependants

4. *Omitted.*

Attribution of earnings

5. (1) Subject to paragraph (4), for the purposes of section 80(3) and (4) (beneficiary's dependant children) and regulation 10 the week to which a person's earnings are to be attributed shall be determined in accordance with the following provisions of this regulation.

(2) Earnings derived from employment as an employed earner or as a self-employed earner (determined in accordance with regulations 2, 3, 4 and 7 of the Social Security Benefit (Computation of Earnings) Regulations 1978(a) which are payable in respect of a period shall be attributed at a weekly amount to a period equal in length to the period in respect of which they are paid beginning with the date on which they are treated as paid under paragraph (3).

(3) A payment of earnings to which paragraph (2) applies shall be treated as paid -

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid; and
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This regulation does not apply in any case to which regulation 5 of the Social Security Benefit (Computation of Earnings) Regulations 1978 applies.

(a) S.I. 1978/1698.

PART II

Child Dependants

Circumstances in which a person who is not entitled to child benefit is to be treated as if so entitled

6. (1) For the purposes of section 80 (increase of benefit in respect of dependent children), in so far as it relates to incapacity benefit, a person shall be treated as if he were entitled to child benefit in respect of a child for any period throughout which -

(a) child benefit has been awarded to a parent of that child with whom that child is living and with whom that person is residing and either -

(i) the child is being wholly or mainly maintained by that person; or

(ii) that person is also a parent of the child; or

(b) he, or his spouse with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which the birth occurred.

(2) Where for any period a person who is in the *Isle of Man* could have been entitled to receive a payment of an amount by way of an increase of incapacity benefit in respect of a child but for the fact that in pursuance of any agreement with the government of a country outside the *Isle of Man* he, or his spouse who is residing with him, is entitled in respect of the child in question to the family benefits of that country and is not entitled to child benefit, he shall for the purposes of entitlement to the said payment be treated as if he were entitled to child benefit for the period in question.

(3) For the purposes of paragraph (1) -

(a) "week" means a period of 7 days beginning with a Monday; and

(b) a child shall not be regarded as living with a person unless he can be so regarded for the purposes of section 143 (meaning of "person responsible for child").

Circumstances in which a person entitled to child benefit is to be treated as if he were not so entitled

7. (1) For the purposes of section 80 (increase of benefit in respect of dependent children) in so far as they relate to incapacity benefit a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for -

(a) any period throughout which -

(i) that person, not being a parent of the child, does not fall to be treated as responsible for the child under section 143 (meaning of "person responsible for child"); and

(ii) a parent of that child falls to be treated as responsible for the child under that section; or

(b) any period throughout which -

(i) that person not being a parent of that child, falls to be treated as responsible for the child under section 143; and

(ii) a parent of that child also falls to be treated as responsible for the child under that section; or

(c) any day following the day on which that child died.

(2) Sub-paragraph (b) of paragraph (1) shall not apply in the case of a person who is wholly or mainly maintaining the child referred to in that sub-paragraph.

(3) For the purposes of section 80 (increase of benefit in respect of dependent children) a person who is entitled to child benefit in respect of a child shall be treated as not so entitled for any period for which that benefit is not payable by virtue of any of the provisions of regulation 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child), 7A (exclusion from benefit of children aged 16 but under the age of 19 who are receiving advanced education), 7B (child receiving training under the youth training scheme) or 7C (child receiving supplementary benefit) of the Child Benefit (General) Regulations 1976(a) or any provision contained in regulations made under section 142(1) (meaning of "child") in so far as those regulations provide that child benefit is not to be payable by virtue of paragraph (b) of section 144(1) (exclusions and priority) and regulations made under that paragraph.

Contribution towards cost of providing for child

8. (1) Where, apart from section 81(1), a person is entitled to receive, in respect of a particular child, an increase of incapacity benefit under any of the provisions of section 80 for any period, and neither of the conditions set out in paragraph (2) is satisfied, that person shall, for the purposes of section 81(2), be deemed as respects that period to be making the contributions so required at a weekly rate not less than that required by that section if -

- (a) he gives an undertaking in writing to make such contributions; and
- (b) on receiving the amount of the benefit or increase in question, he in fact makes such contributions.

(2) The conditions referred to in paragraph (1) are -

- (a) that the person would be treated for the purposes of Part IX of the Contributions and Benefits Act as having the child living with him; or
- (b) that contributions are being made to the cost of providing for the child at a rate equal to the amount of the relevant increase of benefit.

(3) Where, in respect of any period, a person fails to make contributions which he has undertaken to make in accordance with paragraph (1), the decision awarding the increase for that period in respect of the child shall be revised.

(4) Except in a case to which applies either -

- (a) regulation 13A of the Social Security Benefit (Persons Abroad) Regulations 1975(b) (modification of the Contributions and Benefits Act in relation to title to benefit for beneficiary's child dependants); or
- (b) any regulation made under section 4(10) of the Social Security (Incapacity for Work) Act 1994 which provides, subject to the regulations for regulation 15 of the Social Security (Dependency) Regulations 1977(c) to have effect.

paragraph (b) of section 81(2) (contributions mentioned in that paragraph to be over and above those required for the purposes of section 143(1)(b)) shall not apply in a case where neither the beneficiary nor his spouse (if he has a spouse and his spouse is residing with him) is in fact entitled to child benefit in respect of the child in question.

(a) S.I. 1976/965; (b) S.I. 1975/563; (c) S.I. 1977/343.

PART III

Adult Dependants

Increase of incapacity benefit for adult dependants and persons having the care of children

9. (1) Subject to regulation 14, a beneficiary shall be entitled to an increase of incapacity benefit under section 86A(1) if -

(a) he is residing with a spouse of his and either -

- (i) the spouse is aged at least 60; or
- (ii) the beneficiary is entitled to an increase of incapacity benefit under section 80 in respect of a child; or

(b) he has a spouse who is aged at least 60 and not residing with him but to whose maintenance he contributes at a weekly rate equal to or greater than the rate of the increase; or

(c) there is an adult who -

- (i) is resident with him; and
- (ii) cares for a child for whom the beneficiary is entitled to an increase under section 80; or

(d) subject to paragraph (3) there is an adult who -

- (i) is not resident with him; and
- (ii) cares for a child for whom the beneficiary is entitled to an increase under section 80,

and in regulation 10 "dependant" means a person who satisfies the conditions set out in any of the sub-paragraphs of this paragraph.

(2) For the purpose of paragraph (1) a person shall be treated as entitled to an increase for a child under section 80 if he would be so entitled if the day in question was a day upon which he was entitled to either short-term incapacity benefit at the higher rate or to long-term incapacity benefit.

(3) A beneficiary shall not be entitled to an increase of incapacity benefit under paragraph (1)(d) unless the other person -

(a) is employed by the beneficiary in an employment in respect of which the weekly expenses incurred by the beneficiary are not less than the standard rate of increase and was so employed before the beneficiary became incapable of work, subject to the qualification that the condition of employment before that event shall not apply in a case where the necessity for the employment first arose thereafter; or

(b) is a person to whose maintenance the beneficiary is contributing at a weekly rate not less than the standard rate of increase.

Earnings rule for increases for adult dependants

10. (1) Subject to paragraphs (2) and (3), the increase in benefit to which a beneficiary is entitled under regulation 9 shall not be payable for the benefit week immediately following any benefit week in which the dependant has earnings which exceed the amount of the standard rate of increase.

(2) Where the beneficiary is entitled to long-term incapacity benefit or to short-term incapacity benefit at a higher rate under section 30B(4), and the dependant is residing with the beneficiary, the increase of benefit shall not be payable for the benefit week immediately following any benefit week in which the dependant has earnings which exceed the amount specified in paragraph 1 of Part I of Schedule 4 to the Contributions and Benefits Act.

(3) In determining the earnings of a dependant for the purposes of this regulation no account shall be taken of any earnings of the dependant from employment by the beneficiary to care for a child such as is mentioned in regulation 9(1)(c).

(4) Where the dependant satisfies the conditions set out in regulation 9(1)(d) and is employed by the beneficiary to care for a child such as is mentioned in that sub-paragraph, the increase shall be payable irrespective of the dependant's earnings.

Apportionment of payments by way of occupational or personal pension made otherwise than weekly

11. For the purpose of section 89 (earnings to include occupational or personal pension for certain purposes) in so far as it relates to incapacity benefit, where payment by way of occupational or personal pension is for any period made otherwise than weekly, the amount of any such payment for any week in that period shall be determined -

- (a) where the payment is made for a year, by dividing the total by 52;
- (b) where the payment is made for three months, by dividing the total by 13;
- (c) where the payment is made for a month, by multiplying the total by 12 and dividing the result by 52;
- (d) where payment is made for two or more months, otherwise than for a year or for three months, by dividing the total by the number of months, multiplying the result by 12 and dividing the result of that multiplication by 52; or
- (e) in any other case, by dividing the amount of the payment by the number of days in the period for which it is made and multiplying the result by 7.

Contribution to maintenance of adult dependant

12. (1) Subject to paragraph (2), for the purposes of regulation 9 (increase of incapacity benefit for adult dependants and persons having the care of children) -

- (a) a beneficiary shall not be deemed to satisfy the requirement contained in that regulation that he is contributing to the maintenance of his spouse or a person having the care of a child, as the case may be, at a weekly rate of not less than the standard rate of increase unless when in employment, or not incapable of work, (except in a case where the dependency did not arise until later), he contributed to that spouse's or person's maintenance at a weekly rate of not less than the standard rate of increase;
- (b) in a case where an increase of benefit is, apart from the said requirement, payable at a weekly rate less than the standard rate of increase, a beneficiary shall, subject to sub-paragraph (a) above, be deemed to satisfy the said requirement if he is contributing to the maintenance of the spouse or the person having the care of a child at a weekly rate of not less than that of the increase.

(2) Where, within one month of having been entitled to an increase -

(a) of unemployment benefit under section 82 by virtue of having satisfied the requirement of either -

(i) subsection (1)(a)(ii) of that section; or

(ii) subsection (3)(b) of that section by reason of her contributing to the maintenance of her husband; or

(b) of incapacity benefit under regulation 9 by virtue of having satisfied either the requirement in paragraph (1)(b) or the requirement in paragraph (3)(b) of that regulation,

a person becomes entitled to incapacity benefit which attracts a standard rate of increase higher than that to which he had been entitled, he shall be deemed to satisfy the condition in paragraph (1)(a) if he satisfies it in relation to the benefit to which he had been entitled; and in this paragraph "entitled" includes deemed to have been entitled.

(3) Until 13th May 1995 the reference in paragraph (2)(a) to unemployment benefit includes a reference to sickness benefit.

Increase of short-term incapacity benefit for persons over pensionable age

13. (1) In relation to any increase of short-term incapacity benefit to which section 87 (rate of increase where associated retirement pension is attributable to reduced contributions) applies the amount of such increase shall be determined in accordance with the following provisions of this regulation.

(2) The amount of the increase shall be the relevant percentage of the amount specified in column 3 of paragraph 1A of Part IV of Schedule 4 to the Contributions and Benefits Act (increases for dependants).

(3) In this regulation "relevant percentage" means the percentage specified in regulation 6(3B) of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979(a) (reduced rates of benefit where contribution record is deficient).

Disqualification for receipt of increases in cases of imprisonment and absence abroad

14. (1) Subject to paragraph (2), where an adult (other than the spouse of the beneficiary) in respect of whom a beneficiary is entitled to an increase of incapacity benefit under paragraph (1)(c) or (d) of regulation 9 is absent from the *Isle of Man*, or is undergoing imprisonment or detention in legal custody, the beneficiary shall not be entitled to that increase.

(2) Paragraph (1) shall not apply in the case of an adult who is absent from the *Isle of Man* and who is resident with the beneficiary in circumstances where the disqualification for receipt of incapacity benefit does not apply in the case of the beneficiary by virtue of regulation 2 of the Social Security Benefit (Persons Abroad) Regulations 1975(b).

(a) S.I. 1979/642; (b) S.I. 1975/563.

PART IV

Consequential Amendments

Amendment of the Social Security (Dependency) Regulations 1977

15. (1) The Social Security (Dependency) Regulations 1977(a) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1 of those Regulations -

(a) for paragraph (3) there shall be substituted the following paragraph -

"(3) Regulations 2(2) and (3), 4 and 5(1) shall, with any necessary modifications, apply to invalid care allowance as they apply to retirement pension."; and."

(b) after paragraph (3) there shall be inserted the following paragraph -

"(3A) Nothing in these Regulations applies for the purposes of incapacity benefit under section 30A of the Contributions and Benefits Act."

(3) In regulation 3 of those Regulations -

(a) in paragraph (1) the words "47(1)(a)" shall be omitted; and

(b) in paragraph (5) for the words ",45A(2)(b) and 47(1)(a)" there shall be substituted the words "and 45A(2)(b)".

(4) In paragraph (1)(a) of regulation 8 of those Regulations the words "or invalidity pension" shall be omitted.

(5) In regulation 10 of those Regulations -

(a) in paragraph (1) the words "or sickness" and the words "or an invalidity pension" shall be omitted; and

(b) in paragraph (3) the words "sickness benefit, or" shall be omitted.

(6) In regulation 11 of those Regulations -

(a) in paragraph (1) the words "47(1)(a)" and (in both places where they occur) the words ", sickness benefit, an invalidity pension", shall be omitted.

(b) in paragraph (2) -

(i) the words ", or sickness benefit" shall be omitted; and

(ii) after the words "(but no other requirement in that sub-paragraph)," there shall be inserted the words "or having been entitled to an increase of short-term incapacity benefit by virtue of having satisfied the requirements of regulation 9(1)(b) of (3)(b) of the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994,";

(a) S.I. 1977/343.

(c) in paragraph (2A)(a) -

- (i) the words "or sickness benefit" shall be omitted; and
- (ii) after the words "at a weekly rate not less than the standard rate of increase," there shall be inserted the words "or of having been entitled to an increase of short-term incapacity benefit by virtue of having satisfied the requirements of regulation 9(1)(b) or (3)(b) of the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994, "; and

(d) in paragraph (3) the words "or sickness benefit" shall be omitted.

(7) For regulation 12 of those Regulations there shall be substituted the following regulation -

"Prescribed circumstances for the purposes of section 90 of the Social Security Contributions and Benefits Act

12. (1) The provisions of Part IV of the Contributions and Benefits Act (increases for dependants) and of the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994 shall apply in relation to increases of severe disablement allowance for child or adult dependants under section 90 of the Contributions and Benefits Act as they apply to increases of long-term incapacity benefit for child or adult dependants.

(2) For the purposes of increases of invalid care allowance for child or adult dependants under section 90 of the Contributions and Benefits Act, the prescribed circumstances in which a beneficiary is entitled to such an increase shall be as set out in Schedule 2 to these Regulations."

(8) In regulation 13 of those Regulations -

- (a) in the heading the words ",sickness benefit and invalidity pension"; and
- (b) in paragraph (1) the words ", sickness benefit or invalidity pension",

shall be omitted.

(a) Paragraph (2A) was inserted into regulation 11 by S.I. 1987/355, regulation 4(b).

SCHEDULE 3

This Schedule sets out the text of the Social Security (Incapacity Benefit) Regulations 1994 (S.I. 1994/2946) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1994 No. 2946 (as applied)

SOCIAL SECURITY

The Social Security (Incapacity Benefit) Regulations 1994

ARRANGEMENT OF REGULATIONS

PART I

General

1. Citation and commencement
2. Interpretation

PART II

Entitlement to incapacity benefit: Supplementary provisions

3. Definition of "training for work" for the purposes of section 30C(6) of the Contributions and Benefits Act
4. Days not to be treated as days of incapacity for work
5. Night workers
6. Calculating periods of incapacity for persons receiving certain regular treatment
7. *Omitted.*
8. Limit of earnings from councillor's allowance
9. Councillor's allowance paid otherwise than weekly

PART III

Rate of incapacity benefit

10. Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date
11. Qualifying date for entitlement to increased rate of incapacity benefit - previous entitlement to statutory sick pay
12. Qualifying date for entitlement to increased rate of incapacity benefit - members of the armed forces
13. Qualifying date for entitlement to increased rate of incapacity benefit - widows

PART I

General

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity Benefit) Regulations 1994 and shall come into force on 13th April 1995.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires -

"the Administration Act" means the Social Security Administration Act 1992(a); and

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(b).

(2) In these Regulations -

(a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations; and

(b) any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

(a) 1992 c.5; (b) 1992 c.4.

PART II

Entitlement to incapacity benefit: Supplementary provisions

Definition of "training for work" for the purposes of section 30C(6) of the Contributions and Benefits Act

3. For the purposes of section 30C(6) of the Contributions and Benefits Act (which provides for days of training for work to be treated as days of incapacity for work) "training for work" also includes any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

Days not to be treated as days of incapacity for work

4. (1) For the purposes of incapacity benefit a day shall not be treated as a day of incapacity for work if it is -

(a) a day in respect of which a person -

- (i) has made no claim for incapacity benefit;
- (ii) has made a claim for incapacity benefit but not within the prescribed time and good cause for the delay is not shown; or
- (iii) has made a claim for incapacity benefit but not within the prescribed time and, whether or not the person has shown good cause for the delay, he is not entitled to benefit as a result of section 1(2) of the Administration Act (which provides for a 12 month limit on claims for incapacity benefit);

(b) a day on which a person is disqualified for receiving incapacity benefit during a period of absence from the *Isle of Man* or imprisonment or detention in legal custody, if that disqualification is for more than 6 weeks; or

(c) subject to paragraph (2), a day on which a person attends a training course in respect of which he is paid a training allowance.

(2) Paragraph (1)(c) shall not apply -

- (a) for the purposes of any claim for incapacity benefit for a period commencing after a person ceased attending such a training course; or
- (b) in calculating a period of continuous incapacity for work for the purposes of regulation 2 of the Social Security Benefit (Persons Abroad) Regulations 1975(a).

Night workers

5. (1) For the purposes of incapacity benefit, where a person works for a continuous period which extends over midnight into the following day, the day on which the lesser part of that period falls shall be treated as a day of incapacity for work if that person was incapable of work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal -

- (a) if the days in question fall at the beginning of a period of incapacity for work, the second day shall be treated as a day of incapacity for work; and
- (b) if the days in question fall at the end of period of incapacity for work, the first day shall be treated as a day of incapacity for work.

(a) S.I. 1975/563.

Calculating periods of incapacity for work for persons receiving certain regular treatment

6. (1) In the cases specified in paragraph (2), section 30C(1)(b) of the Contributions and Benefits Act (which defines a period of incapacity for work) shall have effect as if the period of 4 days mentioned there were a period of 2 days, whether consecutive or not, within a period of 7 consecutive days.

(2) The cases referred to in paragraph (1) are those where the days of incapacity for work in question result from -

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis, by way of parental chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

Days of statutory sick pay to be included in days of entitlement to incapacity benefit

7. *Omitted.*

Limit of earnings from councillor's allowance

8. For the purposes of section 30E(1) of the Contributions and Benefits Act (net amount of councillor's allowance in excess of prescribed amount to be deducted from incapacity benefit) the prescribed amount is £43.00.

Councillor's allowance paid otherwise than weekly

9. (1) For the purposes of section 30E(2) of the Contributions and Benefits Act, where a councillor's allowance is paid otherwise than weekly, an amount calculated in accordance with paragraphs (2) and (3) shall be regarded as the weekly amount of the allowance.

(2) In the case of an attendance allowance, the weekly amount shall be the amount paid in respect of attendances undertaken in the week in question.

(3) In the case of a basic allowance or a special responsibility allowance, the weekly amount shall be calculated -

- (a) where that allowance is paid annually, by dividing the amount paid by 52;
- (b) where that allowance is paid quarterly, by dividing the amount paid by 13;
- (c) where that allowance is paid monthly, by multiplying the amount by 12 and dividing by 52;
and
- (d) in any other case, by dividing the amount of the allowance by the number of days in the period and multiplying it by 7.

(a) S.I. 1975/563.

PART III

Rate of incapacity benefit

Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date

10. (1) The weekly rate of long-term incapacity benefit under section 30A of the Contributions and Benefits Act (incapacity benefit: entitlement)(a) in relation to a period of incapacity for work shall be increased -

- (a) by the higher amount specified in paragraph (2) if on the qualifying date the beneficiary was under the age of 35; and
- (b) by the lower amount specified in that paragraph if on the qualifying date the beneficiary had attained the age of 35 but was under the age of 45.

(2) The amounts referred to in paragraph (1) are -

- (a) higher amount £12.15;
- (b) lower amount £6.10.

Qualifying date for entitlement to increased rate of incapacity benefit - previous entitlement to statutory sick pay

11. *Omitted.*

Qualifying date for entitlement to increased rate of incapacity benefit - members of the armed forces

12. (1) If, for the purposes of regulation 10, the qualifying date in relation to a person would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act (incapacity benefit: rate) but for the fact that on that earlier date he was a serving member of the forces, the qualifying date in relation to him shall nevertheless be that earlier date.

(2) In this regulation "serving member of the forces" has the meaning given to it by regulation 1(2) of the Social Security (Contributions) Regulations 1979(b), except that it does not include a person who falls within that definition by reason only of the fact that he was undergoing training or instruction for a continuous period of not more than 72 hours in any of the forces specified in paragraphs 2 to 9 of Part I of Schedule 3 to those Regulations.

Qualifying date for entitlement to increased rate of incapacity benefit - widows

13. If, for the purposes of regulation 10, the qualifying date in relation to a person who was entitled to a widow's allowance would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act, if in respect of that earlier date she had claimed short-term incapacity benefit and had satisfied the contribution conditions for that benefit specified in paragraph 2 of Schedule 3 to the Contributions and Benefits Act, the qualifying date in relation to her shall nevertheless be that earlier date.

(a) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994.

(b) S.I. 1979/591.

SCHEDULE 4

This Schedule sets out the text of the Social Security (Severe Disablement Allowance) Amendment Regulations 1994 (S.I. 1994/2947) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1994 No. 2947 (as applied)

SOCIAL SECURITY

The Social Security (Severe Disablement Allowance) Amendment Regulations 1994

Citation and commencement

1. These Regulations may be cited as the Social Security (Severe Disablement Allowance) Amendment Regulations 1994 and shall come into force on 13th April 1995.

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

2. (1) The Social Security (Severe Disablement Allowance) Regulations 1984^(a) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2 (interpretation) -

(a) for paragraph (1A) there shall be substituted the following paragraph -

"(1A) In these Regulations -

"councillor" has the same meaning as in section 171F(2) of the Contributions and Benefits Act; and

"councillor's allowance" has the same meaning as in section 30E(2) of the Contributions and Benefits Act."; and

(b) for paragraph (3) of that regulation there shall be substituted the following paragraph -

"(3) In determining whether a day falls within a period of incapacity for work, the provisions of section 30C of the Contributions and Benefits Act (incapacity benefit: days and periods of incapacity for work) and of any regulations made under section 30C(3) and (4) shall have effect for the purposes of severe disablement allowance as they have effect for the purposes of incapacity benefit."

(a) S.I. 1984/1303.

(3) In paragraph (3) of regulation 3, for the words "period of interruption of employment" there shall be substituted the words "period of incapacity for work".

(4) In regulation 6 (modification of section 68(2) and (3) of the Contributions and Benefits Act in relation to persons who have previously been entitled to a severe disablement allowance) for the words "period of interruption of employment" there shall be substituted the words "period of incapacity for work".

(5) In regulation 7 (days for which persons are to be regarded as incapable of work for the purposes of severe disablement allowance) -

(a) for paragraph (1) there shall be substituted the following paragraphs -

"(1) Subject to paragraph (3), for the purposes of severe disablement allowance a person shall not be treated as incapable of work for any day which is not to be treated as a day of incapacity for work under regulation 4(1)(c) (Persons attending training courses) of the Social Security (Incapacity Benefit) Regulations 1994(a).

(1A) Regulation 5 (night workers) of the Social Security (Incapacity Benefit) Regulations 1994 shall apply for the purposes of severe disablement allowance as it applies for the purposes of incapacity benefit."; and

(b) for paragraph (2) there shall be substituted the following paragraph -

"(2) In determining for the purposes of section 68(2) or (3) of the Contributions and Benefits Act whether a person has been incapable of work for a period of not less than 196 consecutive days, a day shall not be treated as a day on which that person was incapable of work if that day was a day on which he was undergoing imprisonment or detention in legal custody and which was part of a period of imprisonment or detention of more than 6 weeks.".

(6) In regulation 8A (severe disablement allowance for persons who are councillors), for the words "regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations" there shall be substituted the words "regulation 8 of the Social Security (Incapacity Benefit) Regulations 1994".

(7) In regulation 20 -

(a) in paragraph (1) for the words "period of interruption of employment" there shall be substituted the words "period of incapacity for work"; and

(b) in paragraph (2) for the words "period of interruption of employment" there shall be substituted the words "period of incapacity for work".

Revocations

3. Regulations 7A (treatment of duties as a councillor as a day of incapacity for work) and 9 (disqualification for severe disablement allowance) of the Social Security (Severe Disablement Allowance) Regulations 1984 are revoked.

(a) S.I. 1994/2946.

SCHEDULE 5

This Schedule sets out the text of the Social Security (Medical Evidence) Amendment Regulations 1994 (S.I. 1994/2975) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1994 No. 2975 (as applied)

SOCIAL SECURITY

The Social Security (Medical Evidence) Amendment Regulations 1994

Citation and commencement

1. (1) These Regulations may be cited as the Social Security (Medical Evidence) Amendment Regulations 1994 and shall come into force on 13th April 1995.

(2) In these Regulations "the principal Regulations" means the Social Security (Medical Evidence) Regulations 1976(a).

Amendment of the principal Regulations

2. (1) The principal Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1 (citation, commencement and interpretation) there shall be inserted after the definition of "the Act" -

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

"the all work test" means the test provided for in section 171C of the Contributions and Benefits Act;"

(3) In regulation 2 (evidence of incapacity for work and confinement) -

(a) in paragraph (1) -

(i) there shall be substituted for the words "where a person claims" up to and including "those days either" -

"where a person claims he is entitled to any benefit, allowance or advantage (other than industrial injuries benefit), and his entitlement to that benefit allowance or advantage depends on his being incapable of work, then in respect of each day until he has been assessed for the purposes of the all work test, he shall provide evidence of such incapacity"; and

(a) S.I. 1976/615; relevant amending instruments are S.I. 1982/699, 1989/1686 and 1992/247.

(b) 1992 c.4.

(ii) there shall be substituted for sub-paragraph (c) -

(c) where the all work test applies and the *Department* so requests, a statement in writing given by a doctor in accordance with the rules set out in Part I of Schedule 1B to these Regulations on the form set out in Part II of that Schedule; or

(d) where it would be unreasonable to require a person to provide a statement from a doctor, such other evidence as may be sufficient to show that he should refrain from work by reason of some specific disease or bodily or mental disablement"; and

(b) in paragraph (2) there shall be inserted after "applies" -

"who has not been assessed for the purposes of the all work test".

(4) In regulation 5 (self certificate for first 7 days of a spell of incapacity for work) -

(a) in paragraph (1) there shall be substituted for the words from the beginning of that paragraph up to and including "right to benefit" -

"The evidence of incapacity required for the purposes of determining entitlement to a benefit, allowance or advantage referred to in regulation 2(1)"; and

(b) in paragraph (2) there shall be substituted for the definition of "spell of incapacity" -

"spell of incapacity" has the meaning given to it by section 171B(3) of the Contributions and Benefits Act."

Insertion of Schedule 1B to the principal regulations

3. The Schedule to these Regulations shall be Schedule 1B to the principal regulations.

SCHEDULE

SCHEDULE 1B

PART I

RULES

1. In these rules, unless the context otherwise requires -

"claimant" means the person in respect of whom a statement is given in accordance with these rules;

"doctor" means a registered medical practitioner not being the claimant;

"all work test statement" means a statement given by a doctor in accordance with these rules.

2. Where the *Department* has requested that the claimant provide an all work test statement, that statement shall be provided in the form prescribed in Part II of this Schedule notwithstanding that the claimant has already provided a statement in accordance with Schedule 1 or 1A.

3. The all work test statement shall be completed in accordance with rules 3, 4, 5, 10 and 11 of Part I to Schedule 1.

4. Subject to rule 5 below, the diagnosis of -

(a) the disorder in respect of which the doctor is advising the claimant to refrain from work or, as the case may be, which has caused the claimant's absence from work; and

(b) any other condition which could affect the claimant's capacity for work,

shall be specified as precisely as the doctor's knowledge of the claimant's condition at the time of the examination permits.

5. Where in the doctor's opinion, a disclosure to the claimant of the precise disorder would be prejudicial to his well being, the diagnosis may be specified less precisely.

6. The notes set out in Part III of this Schedule shall accompany the form of doctor's statement provided by the *Department*.

PART II
FORM OF DOCTOR'S STATEMENT

Doctor's Statement

In confidence to

Mr/Mrs/Miss/Ms

Note for Doctor - We are making an assessment of your patient's eligibility for Incapacity Benefit and other state benefits under the terms of the all work test. Please complete the following boxes.

Main diagnosis (*be as precise as possible*)

Other diagnoses

Doctors remarks

(including comments on the disabling effects of the condition, treatment and progress - accuracy and detail will avoid requests for completion of a medical report).

Note for Doctor - While the all work test is being carried out, we need evidence that your patient should refrain from his usual occupation. Please provide the following information (which will not be part of the all work assessment).

I am issuing the following statement based upon the current guidance to certifying medical practitioners. I examined you today/yesterday and advised you that:

(a) You need not
refrain from
your usual
occupation

(b) You should refrain
from your usual occupation

for (*insert period*)

OR until

Doctor's
signature

Date of
signing

		Form Med 4
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PART III

THE NOTES

The following notes shall accompany the form of doctor's statement provided by the Department:

1. After the words on the doctor's statement "you should refrain from your usual occupation"

(i) if the patient is being given a date when he can return to work the date entered should not be more than 2 weeks after the date of the examination;

(ii) if recovery of capacity for work in the foreseeable future is not expected "further notice" may be entered.

2. The "remarks" box should be used to provide additional information; including further details of diagnosed conditions, the disabling effect of such conditions, and notes on the patient's treatment and progress. Accuracy and detail will avoid requests for completion of a medical report.

3. The "remarks box" should also be used to state whether or not the patient is able to travel a reasonable distance to a medical examination as a result of his condition. If no entry is made, it will be assumed that the patient can travel.

SCHEDULE 6

This Schedule sets out the text of the Social Security (Incapacity for Work) (General) Regulations 1995 (S.I. 1995/311) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1995 No. 311

SOCIAL SECURITY

The Social Security Incapacity for Work (General) Regulations 1995

ARRANGEMENT OF REGULATIONS

PART I

General

1. Citation and commencement
2. Interpretation
3. Application

PART II

General Provisions relating to incapacity for work

CHAPTER I: *Own occupation test*

4. Definition of "remunerative work"
5. Person with more than one occupation

CHAPTER II: *Information and evidence*

6. Information required for determining capacity for work
7. Failure to provide information
8. Person may be called for a medical examination
9. Matters to be taken into account in determining good cause

CHAPTER III: *Persons treated as incapable*

10. Certain persons with a severe condition to be treated as incapable of work
11. Person with an infectious or contagious diseases
12. Hospital in-patients
13. Person receiving certain regular treatment
14. Pregnancy
15. Person to be treated as incapable of work throughout a day

CHAPTER IV: *Treating as capable, disqualification etc.*

16. Person who works to be treated as capable of work
17. Exempt work
18. Disqualification for misconduct etc.

CHAPTER V: *Adjudication*

19. Effect of a determination as to capacity for work
20. Adjudication officer to determine capacity for work
21. Social security appeal tribunal to sit with a medical assessor
22. Appointment of medical assessors

PART III

All work test

23. Interpretation of Part III and the Schedule
24. The all work test
25. Assessment under the all work test
26. Calculation of scores
27. Exceptional circumstances
28. Conditions for treating the all work test as satisfied until assessment

SCHEDULE

Disabilities which may make a person incapable of work

Part I: Physical Disabilities

Part II: Mental Disabilities

PART I

General

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity for Work) (General) Regulations 1995 and shall come into force on 13th April 1995.

Interpretation

2. (1) In these regulations, unless the context otherwise requires -

"activity" means an activity specified in column (1) of Parts I and II of the Schedule;

"adjudication officer" means an officer appointed in accordance with section 38(1) of the Administration Act;

"the Administration Act" means the Social Security Administration Act 1992;

"the all work test" means the test defined in part III of these Regulations;

"benefit" does not include industrial injuries benefit;

"confinement" has the meaning given to it by section 171(1) of the Contributions and Benefits Act;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992;

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

"descriptor" means, in relation to an activity, the descriptor in column (2) of the Schedule which describes a person's ability to perform that activity;

"disability appeal tribunal" means a tribunal constituted under section 43 of the Administration Act;

"doctor" means a registered medical practitioner;

"the own occupation test" means the test defined in section 171B of the Contributions and Benefits Act;

"social security appeal tribunal" means a tribunal constituted under section 41 of the Administration Act;

"spell of incapacity" has the meaning given to it by section 171B(3) of the Contributions and Benefits Act;

"voluntary organisation" means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

"volunteer" means a person who is engaged in voluntary work with a charitable or voluntary organisation, or who is engaged in voluntary work otherwise than for a close relative, where the only payment received by him or due to be paid to him by virtue of being so engaged in respect of any expenses reasonably incurred by him in connection with that work;

"week" means any period of 7 days.

(2) In these Regulations, unless the context otherwise requires, any reference -

(a) to a numbered regulation is to the regulation in these Regulations bearing that number;

(b) to the Schedule is to the Schedule to these Regulations.

Application

3. These Regulations do not apply for the purposes of Part V (benefit for industrial injuries) of the Contributions and Benefits Act.

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER 1

Own Occupation Test

Definition of "remunerative work"

4. (1) For the purposes of section 171B of the Contributions and Benefits Act (the own occupation test) "remunerative work" in relation to the period of 21 weeks referred to in that section means work -

(a) in one occupation in which a person was engaged for 16 or more hours a week for more than 8 weeks; and

(b) for which payment was made or which was done in expectation of payment.

(2) For the purposes of this regulation and regulation 5 -

(a) one occupation comprises either -

(i) all work of the same kind, whether or not it is for the same employer and whether a person is employed or self-employed; or

(ii) all work for the same employer; and

(b) a person who was normally engaged in one occupation for 16 or more hours a week shall be treated as if he had been engaged in that occupation in relation to any week when he was on paid or unpaid leave from that occupation.

Person with more than one occupation

5. Where a person was engaged in more than one occupation which qualified as remunerative work in the period of 21 weeks referred to in regulation 4, his occupation for the purposes of the own occupation test is the last such occupation in which he was engaged during that period; but if, during his last week of remunerative work in that period, he was engaged in more than one such occupation he must satisfy the own occupation test in respect of each.

CHAPTER II

Information and Evidence

Information required for determining capacity for work

6. (1) Subject to paragraph (2) the information or evidence required for the purposes of determining whether a person is capable or incapable of work is -

- (a) where the own occupation test or the all work test applies, evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976(a) which prescribe the form of doctor's statements or other evidence required in each case);
- (b) where the all work test applies, such information as the **Department** may request in the form of a questionnaire relating to a person's ability to perform the activities referred to in the Schedule;
- (c) such additional information relating to the relevant test as the **Department** may request.

(2) Where the **Department** is satisfied that he has sufficient information for a determination whether a person is capable or incapable of work without the information specified in paragraph (1)(b), that information shall not be required for the purposes of that determination.

(3) Where it has been determined that a person is to be treated as incapable of work under regulation 10 to 14 the information referred to in paragraph (1) shall not be required.

Failure to provide information

7. (1) Where a person fails without good cause to comply with a request of the **Department** to provide the information referred to in regulation 6(1)(b) (all work test questionnaire) he shall, subject to paragraph (2), be treated as capable of work.

(2) A person shall not be treated as capable of work under paragraph (1) unless -

- (a) at least 6 weeks have elapsed since the **Department** sent that person the first request for that information; and
- (b) the **Department** has sent that person a further request at least 4 weeks after the first, and at least 2 weeks have elapsed since that further request was sent.

Person may be called for a medical examination

8 (1) Where a question arises as to whether a person is capable of work, he may be called by or on behalf of a doctor approved by the **Department** to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend to or submit himself to such an examination, he shall be treated as capable of work.

(3) A person shall not be treated as capable of work under paragraph (2) unless written notice of the time and place for the examination was sent to him at least 7 days beforehand, or unless he agreed to accept a shorter period of notice.

(a) S.I. 1976/615; relevant amending instruments are S.I. 1982/699, S.I. 1989, S.I. 1992/247 and S.I. 1994/2975

Matters to be taken into account in determining good cause

9. The matters which are to be taken into account in determining whether a person has good cause under regulation 7 or 8 (failure to provide information or attend a medical examination) shall include -

- (a) whether he was outside *the Isle of Man* at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability from which he suffers.

CHAPTER II

Persons Treated as Incapable

Certain persons with a severe condition to be treated as incapable of work

10. (1) A person shall be treated as incapable of work on any day on which any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are -

- (a) that he is in receipt of the highest rate care component of disability living allowance;
- (b) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (c) that he is a blind person whose name is on a register compiled *under section 27 of the National Assistance (Isle of Man) Act 1951 (an Act of Tynwald)*.
- (d) that he is suffering from any of the following conditions -
 - (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (e) that a doctor approved by the *Department* has certified that he is suffering from any of the following conditions -
 - (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological and muscle wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;

- (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
- (vii) a severe and progressive immune deficiency state characterised by the occurrence of opportunistic infections or tumour formation;
- (viii) a severe mental illness.

Person with an infectious or contagious disease

11. A person shall be treated as incapable of work on any day in respect of which he is excluded from work on the certificate of a Medical Officer for Environmental Health and is under medical observation by reason of his being a carrier, or having been in contact with a case, of infectious or contagious disease.

Hospital in-patients

12. A person shall be treated as incapable of work on any day on which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Person receiving certain regular treatment

13. (1) The following provisions of this regulation apply to a person receiving -

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis, by way of parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

(2) A person referred to in paragraph (1) shall be treated as incapable of work on any day on which he is engaged in that treatment.

(3) A person who works during any week in which he receives treatment referred to in paragraph (1) shall be treated as capable of work for the purposes of regulation 16 only on the actual day or days on which he works in that week.

(4) Section 171B(3) of the Contributions and Benefits Act (which defines a spell of incapacity) shall have effect in relation to a person referred to in paragraph (1) as if the period of 4 days mentioned in that section were a period of 2 days, whether consecutive or not, in a period of 7 consecutive days.

Pregnancy

14. A pregnant woman shall be treated as incapable of work -

- (a) on any day on which, because of her pregnancy, there is a serious risk of damage to her health or to the health of her unborn child if -
 - (i) in a case where the own occupation test applies, she does not refrain from work in the occupation which is relevant for the purposes of that test; or
 - (ii) in a case where the all work test applies, she does not refrain from work in any occupation; or

(b) in the case of a woman whose expected or actual date of confinement has been certified in accordance with the Social Security (Medical Evidence) Regulations 1976, on any day in the period -

- (i) beginning with the first day of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
- (ii) ending on the 14th day after the actual date of her confinement,

if she would have no entitlement to a maternity allowance were she to make a claim in respect of that period.

Person to be treated as incapable of work throughout a day

15. A person who at the commencement of any day is, or thereafter becomes, incapable of work by reason of some specific disease or bodily or mental disablement shall be treated as incapable of work throughout that day.

CHAPTER IV

Treating as Capable, Disqualification etc.

Person who works to be treated as capable of work

16. (1) Subject to paragraphs (3) and (4) and regulation 13(3) (persons receiving certain regular treatment) a person shall be treated as capable of work on each day of any week commencing on Sunday during which he does work to which this regulation applies (notwithstanding that it has been determined that he is, or is to be treated under regulations 10 to 15 or 26 as, incapable of work or that he meets the conditions set out in regulation 28(2) for treating the all work test as satisfied until assessment) unless that work -

- (a) falls into any of the categories of exempt work set out in regulation 17(1); and
- (b) is done within the limits set out in regulation 17(2).

(2) Work to which this regulation applies is any work which a person does (not being work as a councillor that is to be disregarded under section 171F of the contributions and Benefits Act), whether or not he undertakes it in expectation of payment, apart from care of a close relative or domestic tasks carried out in his own home.

(3) A person who does work to which this regulation applies in a week which is -

- (a) the week in any spell of incapacity in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work; or
- (b) the last week in any spell of incapacity,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

(4) A person shall not be treated as capable of work under this regulation by reason only of the fact that, during an emergency, he undertakes any activity to protect another person or to prevent serious damage to property or livestock.

Exempt work

17. (1) The categories of exempt work referred to in regulation 16(1)(a) are -

(a) work undertaken on the advice of a doctor which -

- (i) helps to improve, or to prevent or delay deterioration in, the disease or bodily or mental disablement which causes that person's incapacity for work; or
- (ii) is part of a treatment programme and is done under medical supervision while that person is an in-patient or regularly attending as an out-patient of a hospital or similar institution; or
- (iii) is done while that person is attending an institution which provides sheltered work for people with disabilities;

(b) work done as a volunteer;

(c) duties undertaken as a member of a disability appeal tribunal.

(2) The weekly limits in relation to exempt work are -

(a) that earnings from work referred to in paragraph (1)(a) do not exceed £43;

(b) that, subject to paragraph (3), the combined total of the number of hours spent doing work referred to in paragraph (1)(a)(i) or (b) is less than 16;

(c) that work referred to in paragraph (1)(c) is not undertaken on more than one day.

(3) A person shall not be treated as capable of work because he has exceeded the limit referred to in paragraph (2)(b) in any week, if he has worked or would be expected to work, as the case may be, an average of less than 16 hours a week -

(a) in a case where a recognisable cycle in respect of that person's work has been established, in the period of that cycle in which the week in question falls; or

(b) in any other case, in the period which comprises that week and the 4 weeks preceding it.

Disqualification for misconduct etc.

18. (1) Paragraph (2) applies where a person -

(a) has become incapable of work through his own misconduct, except that this disqualification shall not apply in a case where the incapacity is due to pregnancy or a sexually transmitted disease; or

(b) fails without good cause to attend for or submit himself to medical or other treatment (excluding vaccination, inoculation or major surgery) which could significantly improve his medical condition or any disability arising therefrom or which would be likely to render him capable of work; or

(c) fails without good cause to observe any of the following rules of behaviour, namely -

(i) to refrain from behaviour calculated to retard his recovery; or

(ii) not to be absent from his place of residence without leaving word where he may be found.

(2) A person referred to in paragraph (1) shall -

- (a) if he is entitled to incapacity benefit or severe disablement allowance, be disqualified for receiving that benefit or allowance; or
- (b) in the case of any other benefit, allowance or advantage, be treated as capable of work, for such period not exceeding 6 weeks as may be determined under Part II of the Administration Act.

CHAPTER V

Adjudication

Effect of a determination as to capacity for work

19. A determination whether a person is, or is to be treated as, capable or incapable of work, which is made for the purposes of determining his entitlement to any benefit, allowance or advantage, shall be treated as conclusive for the purposes of his entitlement to any other benefit, allowance or advantage in respect of any day or any period to which that determination relates.

Adjudication officer to determine capacity for work

20. Where a question as to whether a person is, or is to be treated as, capable or incapable of work arises in respect of a claim for any benefit, allowance or advantage, that question shall be determined by an adjudication officer notwithstanding that any other question falls to be determined by another authority.

Social security appeal tribunal to sit with a medical assessor

21. Where a matter before a social security appeal tribunal involves a question as to whether a person satisfies the all work test that tribunal shall sit with a medical assessor *appointed under section 42 of the Social Security Administration Act 1992(a)*.

Appointment of medical assessors

22. *Omitted.*

PART III

All work test

Interpretation of Part III and the Schedule

23. In this Part and the Schedule, unless the context otherwise requires, any reference to a numbered part is to the part in the Schedule bearing that number.

The all work test

24. The all work test is a test of the extent of a person's incapacity, by reasons of some specific disease or bodily or mental disablement, to perform the activities prescribed in the Schedule.

Assessment under the all work test

25. (1) A person satisfies the all work test when one or more of the descriptors in Part I or Part II apply to him if, by adding the points listed in column (3) of the Schedule against the descriptor, he obtains a total score of at least -

- (a) 15 points in respect of descriptors specified in Part I; or
- (b) 10 points in respect of descriptors specified in Part II; or
- (c) 15 points in respect of descriptors specified in Parts I and II.

(2) In determining the extent of a person's incapacity to perform any activity listed in Part I he shall be assessed as if he were wearing any prosthesis with which he is fitted.

Calculation of scores

26. (1) In determining a person's score for the purposes of regulation 25(1)(c) -

- (a) a score of between 6 and 9 points in respect of those descriptors specified in Part II shall be treated as a score of 9 points when added to the score in respect of descriptors specified in Part I;
- (b) a score of less than 6 points in respect of any descriptor specified in Part II shall be disregarded.

(2) In determining a person's score where descriptors specified for the activities 1 and 2 in Part I apply to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of either activity which applies to him.

(3) In determining a person's score in respect of descriptors specified in Part I where more than one descriptor specified for any activity applies to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of each activity which applies to him.

(4) In determining a person's score in respect of descriptors specified in Part II the score in respect of each descriptor which applies to him shall be counted.

Exceptional circumstances

27. A person who does not satisfy the all work test shall be treated as incapable of work if in the opinion of a doctor approved by the **Department** -

- (a) he suffers from a previously undiagnosed potentially life-threatening condition; or
- (b) he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work; or
- (c) he suffers from a severe uncontrolled or uncontrollable disease; or
- (d) he will, within three months of the date on which the doctor so approved examines him, have a major surgical operation or other major therapeutic procedure.

Conditions for treating the all work test as satisfied until assessment

28. (1) Where the all work test applies, the test shall, if the conditions set out in paragraph (2) are met, be treated as satisfied until a person has been assessed or until he falls to be treated as capable of work in accordance with regulation 7 or 8.

(2) The conditions are -

- (a) that the person provides evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence required in each case); and
- (b) that it has not within the preceding 6 months been determined, in relation to his entitlement to any benefit, allowance or advantage, that the person is capable of work, or is to be treated as capable of work under regulation 7 or 8, unless -
 - (i) he is suffering from some specific disease or bodily or mental disablement which he was not suffering from at the time of that determination; or
 - (ii) a disease or bodily or mental disablement which he was suffering from at the time of that determination has significantly worsened; or
 - (iii) in the case of a person who was treated as capable of work under regulation 7 (failure to provide information), he has since satisfied any requirements of the *Department* under that regulation.

SCHEDULE

DISABILITIES WHICH MAY MAKE A PERSON INCAPABLE OF WORK

**PART I
PHYSICAL DISABILITIES**

(1) <i>Activity</i>		(2) <i>Descriptor</i>	(3) <i>Points</i>
1. Walking on level ground with a walking stick or other aid if such aid is normally used.	1(a)	Cannot walk at all.	15
	(b)	Cannot walk more than a few steps without stopping or severe discomfort.	15
	(c)	Cannot walk more than 50 metres without stopping or severe discomfort.	15
	(d)	Cannot walk more than 200 metres without stopping or severe discomfort.	7
	(e)	Cannot walk more than 400 metres without stopping or severe discomfort.	3
	(f)	Cannot walk more than 800 metres without stopping or severe discomfort.	0
	(g)	No walking problem.	0
2. Walking up and down stairs	2(a)	Cannot walk up and down one stair.	15
	(b)	Cannot walk up and down a flight of 12 stairs.	15
	(c)	Cannot walk up and down a flight of 12 stairs without holding on and taking a rest.	7
	(d)	Cannot walk up and down a flight of 12 stairs without holding on.	3
	(e)	Can only walk up and down a flight of 12 stairs if he goes sideways or one step at a time.	3
	(f)	No problem in walking up and down stairs.	0

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
3. Sitting in an upright chair with a back, but no arms.	3(a) Cannot sit comfortably.	15
	(b) Cannot sit comfortably for more than 10 minutes without having to move from the chair.	15
	(c) Cannot sit comfortably for more than 30 minutes without having to move from the chair.	7
	(d) Cannot sit comfortably for more than 1 hour without having to move from the chair.	3
	(e) Cannot sit comfortably for more than 2 hours without having to move from the chair.	0
	(f) No problem with sitting.	0
4. Standing without the support of another person or the use of an aid except a walking stick	4(a) Cannot stand unassisted.	15
	(b) Cannot stand for more than a minute before needing to sit down.	15
	(c) Cannot stand for more than 10 minutes before needing to sit down.	15
	(d) Cannot stand for more than 30 minutes before needing to sit down.	7
	(e) Cannot stand for more than 10 minutes before needing to move around.	7
	(f) Cannot stand for more than 30 minutes before needing to move around.	3
	(g) No problem standing.	0
5. Rising from sitting in an upright chair with a back but no arms without the help of another person	5(a) Cannot rise from sitting to standing.	15
	(b) Cannot rise from sitting to standing without holding onto something.	7
	(c) Sometimes cannot rise from sitting to standing without holding on to something.	3
	(d) No problem with rising from sitting to standing.	0

(1) <i>Activity</i>		(2) <i>Descriptor</i>	(3) <i>Points</i>
6. Bending and kneeling.	6(a)	Cannot bend to touch his knees and straighten up again.	15
	(b)	Cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	15
	(c)	Sometimes cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.	3
	(d)	No problem with bending or kneeling.	0
7. Manual dexterity.	7(a)	Cannot turn the pages of a book with either hand.	15
	(b)	Cannot turn a tap or control knobs on a cooker with either hand.	15
	(c)	Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand.	15
	(d)	Cannot use a pen or pencil.	15
	(e)	Cannot tie a bow in laces or string.	10
	(f)	Cannot turn a tap or control knobs on a cooker with one hand.	6
	(g)	Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand.	6
	(h)	No problem with manual dexterity.	0
8. Lifting and carrying.	8(a)	Cannot pick up a paper-back book with either hand.	15
	(b)	Cannot pick up and carry a 0.5 litre carton of milk with either hand.	15
	(c)	Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand.	15
	(d)	Cannot pick up and carry a 2.5 kilogramme bag of potatoes with either hand.	8

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
	(e) Cannot pick up and carry a 0.5 litre carton of milk with one hand.	6
	(f) Cannot pick up and carry a 2.5 kilogramme bag of potatoes with one hand.	0
	(g) No problem with lifting and carrying.	0
9. Reaching.	9(a) Cannot raise either arm to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to his head to put on a hat.	15
	(c) Cannot put either arm behind back to put on a coat or jacket.	15
	(d) Cannot raise either arm above his head to reach for something.	15
	(e) Cannot raise one arm to his head to put on a hat.	6
	(f) Cannot raise one arm above his head to reach for something.	0
	(g) No problem with reaching.	0
10. Speech.	10(a) Cannot speak.	15
	(b) Speech cannot be understood by family or friends.	15
	(c) Speech cannot be understood by strangers.	15
	(d) Strangers have great difficulty understanding speech.	10
	(e) Strangers have some difficulty understanding speech.	8
	(f) No problems with speech.	0

(1) <i>Activity</i>		(2) <i>Descriptor</i>	(3) <i>Points</i>
11. Hearing with a hearing aid or other aid if normally worn.	11.(a)	Cannot hear sounds at all.	15
	(b)	Cannot hear well enough to follow a television programme with the volume turned up.	15
	(c)	Cannot hear well enough to understand someone talking in a loud voice in a quiet room.	15
	(d)	Cannot hear well enough to understand someone talking in a normal voice in a quiet room.	10
	(e)	Cannot hear well enough to understand someone talking in a normal voice on a busy street.	8
	(f)	No problem with hearing.	0
12. Vision in normal daylight or bright electric light with glasses or other aid to vision if such aid is normally worn.	12(a)	Cannot tell light from dark.	15
	(b)	Cannot see the shape of furniture in the room.	15
	(c)	Cannot see well enough to read 16 point print at a distance greater than 20 centimetres.	15
	(d)	Cannot see well enough to recognise a friend across the room.	12
	(e)	Cannot see well enough to recognise a friend across the road.	8
	(f)	No problem with vision.	0
13. Continence.	13(a)	No voluntary control over bowels.	15
	(b)	No voluntary control over bladder.	15
	(c)	Loses control of bowels at least once a week.	15
	(d)	Loses control of bowels at least once a month.	15
	(e)	Loses control of bowels occasionally.	9
	(f)	Loses control of bladder at least once a month.	3
	(g)	Loses control of bladder occasionally.	0
	(h)	No problem with continence	0

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>	
14. Remaining conscious other than for normal periods of sleep.	14(a)	Has an involuntary episode of lost or altered consciousness at least once a day.	15
	(b)	Has an involuntary episode of lost or altered consciousness at least once a week.	15
	(c)	Has an involuntary episode of lost or altered consciousness at least once a month.	15
	(d)	Has had an involuntary episode of lost or altered consciousness at least twice in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	12
	(e)	Has had an involuntary episode of lost or altered consciousness once in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	8
	(f)	Has had an involuntary episode of lost or altered consciousness once in the 3 years before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	0
	(g)	Has no problems with consciousness.	0

PART II
MENTAL DISABILITIES

(1) <i>Activity</i>	(2) <i>Descriptor</i>	(3) <i>Points</i>
15. Completion of tasks.	15(a) Cannot answer the telephone and reliably take a message.	2
	(b) Often sits for hours doing nothing.	2
	(c) Cannot concentrate to read a magazine article or follow a radio programme.	1
	(d) Cannot use a telephone book or other directory to find a number.	1
	(e) Mental condition prevents him from undertaking leisure activities previously enjoyed.	1
	(f) Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration.	1
	(g) Agitation, confusion or forgetfulness has resulted in mishaps or accidents in the 3 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	1
	(h) Concentration can only be sustained by prompting.	1
16. Daily living.	16(a) Needs encouragement to get up and dress.	2
	(b) Needs alcohol before midday.	2
	(c) Is frequently distressed at some time of the day due to fluctuation of mood.	1
	(d) Does not care about his appearance and living conditions.	1
	(e) Sleep problems interfere with his daytime activities.	1

(1) <i>Activity</i>		(2) <i>Descriptor</i>	(3) <i>Points</i>
17. Coping with pressure.	17(a)	Mental stress was a factor in making him stop work.	2
	(b)	Frequently feels scared or panicky for no obvious reason.	2
	(c)	Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful.	1
	(d)	Is unable to cope with changes in daily routine.	1
	(e)	Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest.	1
	(f)	Is scared or anxious that work would bring back or worsen his illness.	1
18. Interaction with other people.	18(a)	Cannot look after himself without help from others.	2
	(b)	Gets upset by ordinary events and it results in disruptive behavioural problems.	2
	(c)	Mental problems impair ability to communicate with other people.	2
	(d)	Gets irritated by things that would not have bothered him before he became ill.	1
	(e)	Prefers to be left alone for 6 hours or more each day.	1
	(f)	Is too frightened to go out alone.	1

SCHEDULE 7

This Schedule sets out the text of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (S.I. 1995/310) with such exceptions, adaptations and modifications made where necessary

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

1995 No. 310

SOCIAL SECURITY

The Social Security (Incapacity Benefit)
(Transitional) Regulations 1995

ARRANGEMENT OF REGULATIONS

PART I

INTRODUCTION

1. Citation, commencement and interpretation

PART II

PROVISIONS COMMON TO THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT AND INVALIDITY BENEFIT

2. Days to be treated as days of incapacity for work
3. Linking periods of interruption of employment and periods of incapacity for work
4. Calculation of days in a period of incapacity for work
5. Claims for sickness benefit or invalidity benefit made on or after the appointed day
6. Interchange of sickness benefit and invalidity benefit with claims for other benefits
7. Persons deemed to be incapable of work
8. Direct Credit Transfer
9. Disqualification
10. Suspension of payment of transitional awards

PART III

PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT

11. Transitional awards of short-term incapacity benefit
12. Special provision for persons entitled to short-term incapacity benefit on termination of employment after a period of entitlement to disability working allowance
13. Special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work
14. Contribution conditions of short-term incapacity benefit in respect of an industrial injury
15. Increase of rate of a transitional award of short-term incapacity benefit for dependants
16. Transitional provision for the treatment of earnings in respect of short-term incapacity benefit for dependants

PART IV

PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM INVALIDITY BENEFIT

17. Transitional awards of long-term incapacity benefit
18. Rate of long-term incapacity benefit in transitional cases
19. Special provisions for persons entitled to long-term incapacity benefit on termination of a period of entitlement to disability working allowance
20. Special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work
21. Special provisions for persons entitled to long-term incapacity benefit in respect of an industrial injury
22. Effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term incapacity benefit
23. Increase of Category A retirement pension for incapacity
24. Increase of rate of long-term incapacity benefit for dependants in transitional cases
25. Further provisions for dependants in respect of the application of old saving provisions
26. Transitional provision for the treatment of earnings in respect of increases of long-term incapacity benefit for dependants

PART V

MISCELLANEOUS TRANSITIONAL PROVISIONS

27. Transition from a six day benefit to a seven day benefit
28. Transitional provisions for an increase of severe disablement allowance for adult dependants

PART VI

PROVISIONS FOR THE TRANSITION TO THE NEW TESTS OF INCAPACITY FOR WORK

29. Transitional awards of incapacity benefit
30. Transitional provision in respect of other benefits
31. Application of the new tests of incapacity for work
32. Treatment of days of incapacity arising before the appointed day

PART 1

INTRODUCTION

Citation, commencement and interpretation

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

(2) In these regulations

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992(a);

"the 1994 Act " means the Social Security (Incapacity for Work) Act 1994(b);

"the Administration Act" means the Social Security Administration 1992(c);

"the appointed day" means 13th April 1995;

"the Increases for Dependants Regulations" means the Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994(d);

"pensionable age" means -

(a) the age of 65, in the case of a man; and

(b) the age of 60, in the case of a woman;

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

(3) In these Regulations, unless the context otherwise requires, a reference -

(a) to a numbered regulation is to the regulation bearing that number in these Regulations;

(b) in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation;

(c) in a regulation to a numbered Part is to the Part bearing that number in these Regulations.

(a) 1992 c.4.

(b) 1994 c.18.

(c) 1992 c.5.

(d) S.I. 1994/2945.

(e) S.I. 1983/1598; relevant amending instruments are S.I. 1986/484, 1989/872 and 1994/1107.

PART II

PROVISIONS COMMON THE TRANSITION TO INCAPACITY BENEFIT FROM SICKNESS BENEFIT AND INVALIDITY BENEFIT

Days to be treated as days of incapacity for work

2. (1) For the purposes of a transitional award of incapacity benefit under regulations 11 and 17 and for the purposes of enabling a claim for incapacity benefit to be made on or after the appointed day on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day -

(a) days before the appointed day which were days of incapacity for work for the purposes of sickness benefit or invalidity benefit and days specified in paragraph (2) shall be treated as having been days of incapacity for work; and

(b) days of entitlement to sickness benefit or invalidity benefit and days specified in paragraph (3) shall be treated as having been days of entitlement to incapacity benefit.

(2) The specified days referred to in paragraph (1)(a) are -

(a) any Sunday before the appointed day which -

(i) immediately follows a day of incapacity for work; and

(ii) immediately precedes a day of incapacity for work; and

(iii) does not fall within a period of disqualification by virtue of section 32 of the 1992 Act and the provisions in regulation 17 of the Unemployment, Sickness and Invalidity Benefit Regulations in force immediately before the appointed day; and

(iv) falls within a period of interruption of employment running at the appointed day;

(b) any Sunday which immediately follows a day of incapacity for work in a period of interruption of employment which comes to an end on a Saturday.

(3) The specified days referred to in paragraph (1)(b) are -

(a) any Sunday which falls within the description specified in paragraph (2)(a) and (b);

(b) - (d) *Omitted.*

Linking periods of interruption of employment and periods of incapacity for work

3. Where the last day of incapacity for work in a period of interruption of employment and the first day of incapacity for work in a period of incapacity for work are not separated by a period of more than 56 days, both these periods shall be treated as one period of incapacity for work.

Calculation of days in a period of incapacity for work

4. The days referred to in regulation 2 shall be taken into account for the purposes of sections 30A(4) (length of entitlement to short-term incapacity benefit), 30B(2) (period after which short-term incapacity benefit is payable at a higher rate) and 30B(4) (period after which incapacity benefit is payable at long-term rate) of the 1992 Act(a).

(a) Sections 30A and 30B were inserted into the Social Security Contributions and Benefits Act 1992 by sections 1(1) and 2(1) respectively of the Social Security (Incapacity for Work) Act 1994.

Claims for sickness benefit or invalidity benefit made on or after the appointed day

5. Where a claim for sickness benefit or invalidity benefit is made on or after the appointed day in respect of a period of incapacity before the appointed day, the provisions in regulation 19 of, and paragraph 2 of Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987 (time for claiming benefit)(a) in force on the appointed day shall be read as if the reference to incapacity benefit were a reference to sickness benefit or invalidity benefit.

Interchange of sickness benefit and invalidity benefit with claims for other benefits

6. Where a claim for sickness benefit, invalidity benefit, severe disablement allowance or maternity allowance is made in respect of a period before the appointed day, the provisions in regulation 9 of, and Part I of Schedule 1 to, the Social Security (Claims and Payments) Regulations 1987 (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative)(b) in force on the appointed day shall be read as if regulation 10(1), (2), (4) and (6) to (9) of the Social Security (Claims and Payments) Amendment (No.2) Regulations 1994 had not come into force.

Persons deemed to be incapable of work

7. (1) A person who immediately before the appointed day is deemed to be incapable of work by virtue of regulation 3(3)(a)(ii) of the Unemployment, Sickness and Invalidity Benefit Regulations (persons deemed to be incapable of work)(c) shall continue to be so deemed on or after the appointed day notwithstanding that the work referred to in regulation 3(3)(a)(ii) is undertaken for 16 hours or more in the week in which it is performed.

(2) Paragraph (1) shall cease to apply -

(a) when a period of incapacity for work comes to an end on or after the appointed day; or

(b) when no work is undertaken for a period of not less than 57 continuous days in a period of incapacity for work.

Direct credit transfer

8. Where a person had an award of sickness benefit or invalidity benefit which was payable by direct credit transfer in accordance with regulation 21 of the Social Security (Claims and Payments) Regulations 1987(d), and that award has effect as an award of incapacity benefit under regulations 11 or 17, the award of incapacity benefit shall continue to be paid by direct credit transfer into the same bank or other account as the award of sickness benefit or invalidity benefit; and for this purpose, any application made and any consent given in relation to the award of sickness benefit or invalidity benefit shall be treated as made or given in relation to the transitional award of incapacity benefit.

Disqualification

9. Where immediately before the appointed day a person is disqualified by virtue of regulations made under section 32 or section 59 of the 1992 Act (disqualifications for sickness benefit and invalidity benefit), the period of disqualification in respect of sickness benefit or invalidity benefit shall continue to have effect and that person shall likewise be disqualified for receiving incapacity benefit for the period of disqualification which remains outstanding at the appointed day.

(a) S.I. 1987/1968: the relevant amending instruments are S.I. 1988/522, 1989/1686, 1991/2741 and 2284, 1993/2113 and 1994/2943.

(b) Regulation 10 of the Social Security (Claim and Payments) Amendment (No.2) Regulations 1994 (S.I. 1994/2943) amends regulation 9 and Part I of Schedule 1 to the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968).

(c) S.I. 1983/1598; regulation 3 was amended by S.I. 1987/688, 1992/585, 1994/559 and 1994/1101.

(d) S.I. 1987/1986; relevant amending instruments are S.I. 1992/247 and 1993/1113.

Suspension of payment of transitional awards

10. Where the *Department* has made a direction to suspend payment of an award of sickness benefit or invalidity benefit in whole or in part, by virtue of regulations made under section 5(1)(n) of the Administration Act, that direction shall have effect as if it were made in respect of a transitional award of incapacity benefit and the payment of the transitional award of incapacity benefit shall likewise be suspended as if it were an award of sickness benefit or invalidity benefit.

PART III

PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT
FROM SICKNESS BENEFIT

Transitional awards of short-term incapacity benefit

11. (1) Where a person is entitled to sickness benefit immediately before the appointed day, that award of sickness benefit shall have effect on or after the appointed day as if it were an award of short-term incapacity benefit; and such an award shall be referred to in these Regulations as a transitional award of short-term incapacity benefit.

(2) A person shall cease to be entitled to a transitional award of short-term incapacity benefit under paragraph (1) -

- (a) when the period of incapacity for work comes to an end; or
- (b) after 364 days of entitlement to short-term incapacity benefit in a period of incapacity for work; or
- (c) if he was entitled to sickness benefit under section 102 of the 1992 Act (sickness benefit in respect of an industrial injury) immediately before the appointed day, when the incapacity for work is no longer a result of a personal injury of the kind mentioned in section 94(1) of the 1992 Act,

whichever first occurs.

(3) Subject to the provisions in Part VI, a person's entitlement to a transitional award of short-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work)(a).

(4) Where a person ceases by virtue of paragraph (2)(b) to be entitled to a transitional award of short-term incapacity benefit he is, subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work), entitled to long-term incapacity benefit in the same period of incapacity for work in which he is not over pensionable age.

(a) Part XIIA was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

Special provision for persons entitled to short-term incapacity benefit on termination of employment after a period of entitlement to disability working allowance

12. (1) Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to a higher rate of short-term incapacity benefit by virtue of section 30C(5) of the 1992 Act(a) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until -

- (a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied;
- (b) in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act(b) together with any increase under section 86A of that Act (increase for adult dependants)(c) equals or exceeds that rate.

Special provisions for persons entitled to short-term incapacity benefit on termination of a period engaged in training for work

13. (1) Where a person who was entitled to a transitional award of short-term incapacity benefit becomes entitled to the higher rate of short-term incapacity benefit by virtue of section 30C(6) of the 1992 Act(d) and the rate of that benefit is less than the rate at which the transitional award of incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until -

- (a) in the case where the transitional award included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied;
- (b) in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act (increase for adult dependants) equals or exceeds that rate.

(2) Where a person -

- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of not more than 57 days immediately after the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations (days when a person is attending a training course not to be treated as days of incapacity for work); and
- (b) had been entitled to sickness benefit in a period of interruption of employment within a period not exceeding 57 days prior to the first day of attendance on the training course; and
- (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course he becomes entitled to incapacity benefit by virtue of sections 30A, 40 or 41 of the 1992 Act(e); and

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- (a) Section 30C(5) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994
 - (b) Section 30B was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.
 - (c) Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.
 - (d) Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.
 - (e) Section 30A was inserted into the Social Security Contributions and Benefits Act 1992 by section 1(1) of the Social Security (Incapacity for Work) Act 1994. Sections 40 and 41 of the Social Security Contributions and Benefits Act 1992 were amended by section 11 of, Schedule 1, paragraphs 9 and 10 to, the Social Security (Incapacity for Work) Act 1994.

- (d) the rate of short-term incapacity benefit is less than the rate at which a transitional award of short-term incapacity benefit would have been payable had the period of entitlement to sickness benefit referred to in sub-paragraph (b) had been running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 15(1), the conditions in regulation 15(3) are no longer satisfied, and in any other case, the rate of short-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purpose of paragraph (2), days of attendance on a training course referred to in that paragraph shall be treated as days of incapacity for work.

Contribution conditions of short-term incapacity benefit in respect of an industrial injury

14. (1) Where a person was entitled to sickness benefit under section 102 of the 1992 Act (sickness benefit in respect of industrial injury) immediately before the appointed day, the contribution conditions as specified in Schedule 3, Part I, paragraph 2 of the 1992 Act shall be taken to be satisfied -

(a) for the purposes of entitlement to a transitional award of the higher rate of short-term incapacity benefit in respect of that industrial injury;

(b) for the purposes of entitlement to the lower or higher rate of short-term incapacity benefit where -

(i) he ceased to be entitled to a transitional award as a consequence of regulation 11(2)(c); and

(ii) no more than 57 days after he ceased to be so entitled,

he became incapable of work as a result of the personal injury in respect of which the transitional award referred to in head (i) above was payable;

(c) for the purposes of entitlement to short-term incapacity benefit by virtue of section 30C(5) or 30C(6) of the 1992 Act(a) in a case where he becomes incapable for work as a result of the personal injury in respect of which a transitional award of incapacity benefit was made.

(2) Where a person is entitled to incapacity benefit by virtue of paragraph (1)(b), the rate at which incapacity benefit is payable shall be the rate at which a transitional award of short-term incapacity benefit would have been payable had he been entitled to a transitional award of short-term incapacity benefit; and these Regulations shall apply as if the award of incapacity benefit were a transitional award of short-term incapacity benefit.

Increase of rate of a transitional award of short-term incapacity benefit for adult dependants

15. (1) Subject to paragraph (7), where at any time during a period of 56 days immediately before the appointed day -

(a) an increase of sickness benefit under Part IV of the 1992 Act was payable to a person for a spouse who was an adult dependant; and

(b) on the appointed day he becomes entitled to a transitional award of short-term incapacity benefit under regulation 11,

an amount equal to that increase shall be payable.

(a) Section 30C was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

(2) Where as a consequence of a review under section 150 of the Administration Act (*as that section has effect in Great Britain*) in the tax year 1994-95, the amounts specified in column (3) of paragraph 1A of Part IV of Schedule 4 to the 1992 Act(a) are increased, the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 1A of Part IV of Schedule 4 to the 1992 Act.

(3) Subject to the following provisions, an increase under paragraph (1) shall continue to be payable provided that -

(a) the spouse is residing with the beneficiary; or

(b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) The provisions in Part I (general) and Part III (adults), save for regulation 9(1)(a) and (b) of that Part, of the Increases for Dependants Regulations shall apply to an increase under paragraph (1) as they apply to an increase made by virtue of section 86A of that Act(b).

(5) A person shall cease to be entitled to an increase under paragraph (1) when no increase of sickness benefit or short-term incapacity benefit has been paid or payable for a period of at least 57 continuous days.

(6) In calculating the period referred to in paragraph (5) the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6) of the 1992 Act(c) or regulation 13(2) shall not be taken into account.

(7) Where a person is entitled to an increase under paragraph (1) and section 30B(4) of the 1992 Act applies to him the amount of the increase shall be equal to the rate specified in Schedule 4, Part IV, paragraph 2, column (3) of the 1992 Act.

(8) In a case where paragraph (7) applied, the increase shall continue to be payable if, when the transitional award of short-term incapacity benefit is terminated, he immediately becomes entitled to long-term incapacity benefit under section 30A(5) of that Act and he continues to satisfy the conditions in section 30B(4)(a) and (b); and this regulation shall continue to apply to that increase.

(9) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increase for Dependants Regulations.

Transitional provision for the treatment of earnings in respect of increases of short-term incapacity benefit for dependants

16. Where -

(a) on or after the appointed day no increase of short-term incapacity benefit is payable for -

(i) an adult dependant as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependants) of the Increases for Dependants Regulations; or

(ii) a child dependant as a consequence of section 80(3) and (4) of the 1992 Act and regulation 5 of the Increases for Dependants Regulations; and

(a) Paragraph 1A of Part IV of Schedule 4 was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(6) of the Social Security (Incapacity for Work) Act 1994.

(b) Section 86A was inserted into the Social Security Contributions and Benefits Act by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

(c) Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

- (b) the earnings which caused there to be no payment of an increase in paragraph (a) had already resulted in no payment of an increase before the appointed day,

a payment of an increase shall be made as if the provisions in the 1992 Act in force immediately before the appointed day continued to have effect in respect of those earnings and the 1994 Act had not been enacted and regulations 5 and 10 of the Increases for Dependants Regulations had not come into force.

PART IV

PROVISIONS FOR THE TRANSITION TO INCAPACITY BENEFIT FROM INVALIDITY BENEFIT

Transitional awards of long-term incapacity benefit

17. (1) Where a person is entitled to invalidity benefit immediately before the appointed day, that award of invalidity benefit shall have effect on or after the appointed day as if it were an award of long-term incapacity benefit; and such an award shall be referred to in these Regulations as a transitional award of long-term incapacity benefit.

(2) Subject to the provisions in Part VI, a person's entitlement to a transitional award of long-term incapacity benefit shall be subject to him being incapable of work as determined in accordance with Part XIIA of the 1992 Act (incapacity for work)(a).

(3) A person who reaches pensionable age before the appointed day and who is entitled to a transitional award of long-term incapacity benefit under paragraph (1) shall continue to be entitled to that award on any day that he is incapable of work as determined in accordance with Part XIIA of the 1992 Act for as long as he is not more than 5 years over pensionable age.

(4) Where a person reaches pensionable age on or after the appointed day, entitlement to a transitional award of long-term incapacity benefit shall terminate on his attaining pensionable age.

Rate of long-term incapacity benefit in transitional cases

18. (1) Subject to paragraph (7), in transitional cases, the weekly rate of long-term incapacity benefit shall consist of -

- (a) a basic rate of an amount equal to the rate of long-term incapacity benefit specified in Schedule 4, Part I, paragraph 2A, of the 1992 Act(b);
- (b) where an additional pension was paid or payable with invalidity benefit immediately before the appointed day, an additional rate of an amount equal to the rate paid or payable as an additional pension with invalidity benefit immediately before the appointed day; and that amount shall be referred to as the additional rate;
- (c) where an invalidity allowance was payable by virtue of section 34 of the 1992 Act immediately before the appointed day, an amount equal to the appropriate rate specified in paragraph (2); and that amount shall be referred to as a transitional invalidity allowance.

(a) Part XIIA was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

(b) Paragraph 2A in Part I of Schedule 4 was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(2) of the Social Security (Incapacity for Work) Act 1994.

(2) The appropriate rate referred to in paragraph (1)(c) is -

- (a) where the higher rate of invalidity allowance was payable immediately before the appointed day, £12.15;
- (b) where the middle rate of invalidity allowance was payable immediately before the appointed day, £7.60;
- (c) where the lower rate of invalidity allowance was payable immediately before the appointed day, £3.80.

(3) The transitional invalidity allowance shall be up-rated in accordance with the provisions of Part X of the Administration Act (review and alteration) as if that allowance were a sum specified in section 150(1)(a)(i), (2)(a) and (3)(a) of that Act (*as that section has effect in Great Britain*).

(4) In a transitional case, where for any period a person is entitled to an award of long-term incapacity benefit which includes the additional rate and a transitional invalidity allowance, for that period the relevant amount shall be deducted from the appropriate weekly rate of the transitional invalidity allowance and he shall be entitled to the transitional invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(5) In paragraph (4) "the relevant amount" means an amount equal to the additional rate reduced by the amount of any reduction in the weekly rate of incapacity benefit made by virtue of regulation 22.

(6) Where the rate of long-term incapacity benefit includes a transitional invalidity allowance no increase shall become payable by virtue of regulations made under section 30B(7) of the 1992 Act(a).

(7) In a transitional case where a person has attained pensionable age before the appointed day and is not more than 5 years over that age, he shall continue to be entitled to long-term incapacity benefit until he reaches 5 years over pensionable age payable at the rate at which the basic pension referred to in section 44(4) of the 1992 Act(b) is payable.

(8) In determining the rate of long-term incapacity benefit in a transitional case where paragraph (7) applies, any increase of the following descriptions shall be disregarded -

- (a) if he is also entitled to a transitional invalidity allowance under paragraph (1)(c), any increase under section 47(1) or 50(2) of the 1992 Act(c);
- (b) any increase (for married women) under section 53(2) of, or (for deferred retirement) under Schedule 5 to, the 1992 Act;
- (c) any increase (for dependants) under section 80, 83 or 85 of the 1992 Act; and
- (d) any increase (for Category A or Category B pensioners) under section 150 of the Administration Act (annual up-rating) (*as that section has effect in Great Britain*) of the sums mentioned in subsection (1)(e) of that section.

(9) For the purposes of Part IV a transitional case means a case where a person is entitled to -

- (a) a transitional award of long-term incapacity benefit; or
- (b) an award of long-term incapacity benefit on the basis that a day of incapacity for work on or after the appointed day forms part of a period of incapacity for work beginning before the appointed day.

(a) Section 30B(7) was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.

(b) Section 44(4) of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, and Schedule 1, paragraph 11 to, the Social Security (Incapacity for Work) Act 1994.

(c) Section 47 of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, and paragraph 13 of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994.

Special provision for persons entitled to long-term incapacity benefit on termination of a period of entitlement to disability working allowance

19. (1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to incapacity benefit by virtue of section 30C(5) of the 1992 Act(a) and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until -

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act(b) together with any increase under section 86A of that Act (increase for adult dependants)(c) equals or exceeds that rate.

(2) Where a person -

- (a) who was entitled to disability working allowance by virtue of section 129 of the 1992 Act before the appointed day or to disability working allowance at any time in a period of not more than 56 days beginning on or after the appointed day, becomes entitled to incapacity benefit; and
- (b) would have become entitled to invalidity benefit by virtue of section 33(7) or section 42 of the 1992 Act had the 1994 Act not come into force; and
- (c) the rate of incapacity benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had the days of entitlement to invalidity benefit in a period of interruption of employment which arose immediately before the period of entitlement to disability working allowance been days of entitlement to invalidity benefit in a period of interruption of employment running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purposes of paragraph (2), the days of entitlement to disability working allowance referred to in that paragraph shall be treated as days of incapacity for work.

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- (a) Section 30C(5) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.
 - (b) Section 30B was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.
 - (c) Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

Special provisions for persons entitled to long-term incapacity benefit on termination of a period engaged in training for work

20. (1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to long-term incapacity benefit by virtue of section 30C(6) of the 1992 Act(a) and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until -

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act(b) together with any increase under section 86A of that Act (increase for adult dependants)(c) equals or exceeds that rate.

(2) Where a person -

- (a) at any time in a period of not more than 57 days immediately before the appointed day or at any time in a period of more than 57 days immediately after the appointed day attends a training course of the type specified in regulation 7(1)(f) of the Unemployment, Sickness and Invalidity Benefit Regulations (days when a person is attending a training course not to be treated as days of incapacity for work); and
- (b) had been entitled to invalidity benefit in a period of interruption of employment which arose within a period not exceeding 57 days prior to the first day of attendance on the training course; and
- (c) within a period not exceeding 57 days beginning on the day after the last day of attendance on the training course becomes entitled to incapacity benefit by virtue of sections 30A, 40 or 41 of the 1992 Act(d); and
- (d) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the period of entitlement to invalidity benefit referred to in sub-paragraph (b) been running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of incapacity benefit under section 30B of the 1992 Act together with any increase under section 86A of that Act equals or exceeds that rate.

(3) For the purpose of paragraph (2), the days referred to as days of attendance on a training course in that paragraph shall be treated as days of incapacity for work.

(a) Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

(b) Section 30B was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(1) of the Social Security (Incapacity for Work) Act 1994.

(c) Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

(d) Section 30A was inserted into the Social Security Contributions and Benefits Act 1992 by section 1(1) of the Social Security (Incapacity for Work) Act 1994. Sections 40 and 41 of the Social Security Contributions and Benefits Act 1992 was amended by section 11 of, paragraphs 8 and 9 of Schedule 11 to, the Social Security (Incapacity for Work) Act 1994.

Special provisions for persons entitled to long-term incapacity benefit in respect of an industrial injury

21. (1) subject to paragraph (2), a person entitled to a transitional award of long-term incapacity benefit in respect of a personal injury of a kind mentioned in section 94(1) of the 1992 Act shall cease to be so entitled when the incapacity for work is no longer as a result of that injury.

(2) Where a person's entitlement to a transitional award of long-term incapacity benefit ceases as a consequence of paragraph (1) and no more than 57 days after entitlement to that award ceases he becomes incapable for work as a result of the same personal injury in respect of which the transitional award of long-term incapacity benefit was payable, he shall be entitled to benefit at the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be so entitled; and these Regulations shall apply as if the award of incapacity benefit were a transitional award of long-term incapacity benefit.

Effect of entitlement to guaranteed minimum pensions on payment of the additional rate element in a transitional case of long-term incapacity benefit

22. (1) Where a person who is a transitional case is entitled to both -

(a) an award of long-term incapacity benefit which includes the additional rate; and

(b) to one or more guaranteed minimum pensions, and had been entitled to an invalidity pension under section 41 of the 1992 Act immediately before the appointed day, the weekly rate of the award of long-term incapacity benefit shall be reduced by an amount equal -

(i) to the additional rate; or

(ii) to the weekly rate of the pension mentioned in paragraph (b) or if there is more than one such pension, their aggregate weekly rates,

whichever is less.

(2) Where a person is entitled to an award of long-term incapacity benefit which includes the additional rate and the transitional invalidity allowance, the weekly rate of that award shall be reduced by the relevant amount being deducted from the weekly rate of the transitional invalidity allowance and he shall be entitled to that allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(3) Where for any period a person is entitled to -

(a) an award of long-term incapacity benefit which does not include the additional rate; and

(b) one or more guaranteed minimum pensions,

the weekly rate of the award of long-term incapacity benefit shall be reduced by deducting the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions from the weekly rate of the transitional invalidity allowance and a person shall be entitled to that allowance only if there is a balance after deduction and, if there is a balance, at a weekly rate equal to it.

(4) Where for any period a person is entitled to -

(a) an award of long-term incapacity benefit which includes the additional rate but does not include the transitional invalidity allowance; and

(b) one or more guaranteed minimum pensions; and

(c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7 to the 1992 Act,

the relevant amount shall be deducted from the amount of the increase of unemployability supplement specified in Schedule 4, Part V, paragraph 6 to the 1992 Act, and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

(5) Where for any period a person who is a transitional case is entitled to -

- (a) an award of long-term incapacity benefit which does not include the additional rate; and
- (b) one or more guaranteed minimum pensions; and
- (c) an increase of unemployability supplement under section 106 and paragraph 3 of Schedule 7 to the 1992 Act,

the increase of the unemployability supplement shall be reduced by the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and a person shall be entitled to an increase only if there is a balance after that deduction and, if there is a balance, only an amount equal to it.

(6) In this regulation "the relevant amount" means an amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions and the additional rate reduced by -

- (a) the additional rate; or
- (b) the weekly rate or aggregate weekly rates of the guaranteed minimum pension,

whichever is the less.

Increase of Category A retirement pension for incapacity

23. Where a person has been entitled to invalidity allowance or transitional invalidity allowance at any time during a period of 57 days before attaining pensionable age, sections 47 and 61 of the 1992 Act shall continue to have effect as though section 11 of, and paragraph 13 of Schedule 1 to, the 1994 Act had not come into force and as though any reference to invalidity allowance in section 47 were a reference to transitional invalidity allowance or invalidity allowance.

Increase of rate of long-term incapacity benefit for dependants in transitional cases

24. (1) Subject to paragraphs (3), (4) and (5) and regulation 25, in a transitional case where at any time during a period of 56 days immediately before the appointed day -

- (a) an increase in the rate of invalidity benefit was paid by way of a concessionary payment to compensate for non-payment of an increase for a spouse who was an adult dependant under Part IV of the 1992 Act; or
- (b) an increase in the rate of invalidity benefit was payable for a spouse who was an adult dependant under Part IV of the 1992 Act,

an amount equal to that increase shall be payable.

(2) Where, as a consequence of a review under section 150 of the Administration Act (*as that section has effect in Great Britain*) in the tax year 1994-95, the amounts specified in column (3) of paragraph 2 of Part IV of Schedule 4 to the 1992 Act(a) are increased, the increase payable under paragraph (1) shall likewise be increased by an equal amount; and thereafter an increase payable under paragraph (1) shall be an amount equal to the appropriate amount specified in column (3) of paragraph 2 of Part IV of Schedule 4 to the 1992 Act.

(a) Paragraph 2 of Part IV of Schedule 4 to the Social Security Contributions and Benefits Act 1992 was amended by section 2(6) of the Social Security (Incapacity for Work) Act 1994.

(3) Except as provided for in regulation 25, an increase under paragraph (1) shall continue to be payable where -

(a) the spouse is residing with the beneficiary; or

(b) the beneficiary is contributing to the maintenance of his spouse at the weekly rate equal to or greater than the rate of the increase.

(4) Subject to regulations 25 and 26 and paragraph (5), the provisions in Part I (general) and Part III (adults), save for regulation 9(1)(a) and (b) of that Part, of the Increases for Dependants Regulations shall apply to the increase as if it were an increase under section 86A of the 1992 Act(a).

(5) Where an increase under paragraph (1) is paid or payable to a person over pensionable age, the provisions in regulation 13 of the Increases for Dependants Regulations (increase of short-term incapacity benefit for persons over pension age) shall apply to the increase of long-term incapacity benefit as if that increase were an increase of short-term incapacity benefit.

(6) Where a person becomes entitled to an increase under paragraph (1), he shall not be entitled to an adult dependency increase to which he would, but for this provision, be entitled under the Increases for Dependants Regulations.

(7) A person shall cease to be entitled to an increase under paragraph (1) when either -

(a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days;

(b) no increase of invalidity benefit or long-term incapacity benefit is paid or payable for at least 57 continuous days in a period of incapacity for work.

(8) In calculating the period referred to in paragraph (7), the days of entitlement to disability working allowance or the days of attendance on a training course of a type referred to in section 30C(6) of the 1992 Act(b) and regulation 19(2) shall not be taken into account.

Further provisions for dependants in respect of the application of old saving provisions

25. (1) 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 the appointed day, the old saving provisions referred to in paragraph (2) shall continue to have effect subject to the following provisions of this regulation.

(2) The old saving provisions referred to in paragraph (1) are -

(a) regulation 15 of the Social Security Benefit (Dependency) Regulations 1977(c);

(b) *Omitted.*

(c) regulation 3 of the Social Security (Dependency) Amendment Regulations 1984(d);

(a) Section 86A was inserted into the Social Security Contributions and Benefits Act 1992 by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

(b) Section 30C(6) was inserted into the Social Security Contributions and Benefits Act 1992 by section 3(1) of the Social Security (Incapacity for Work) Act 1994.

(c) S.I. 1977/343.

(d) S.I. 1984/1698.

- (d) regulation 3 of the Social Security (Dependency) Amendment Regulations 1985(a)
 - (e) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989(b);
 - (f) regulation 4 of the Social Security (Dependency) Amendment Regulations 1992(c); and
 - (g) any administrative provision which before the appointed day enabled a concessionary payment to be made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of any one of the regulations referred to in sub-paragraphs (a) to (f) ceasing to apply to an increase due to attendance on a training course.
- (3) The old saving provisions referred to in paragraph (2) shall cease to have effect when -
- (a) no invalidity benefit or long-term incapacity benefit has been paid for at least 57 continuous days; or
 - (b) no increase is paid for a dependant for a continuous period of at least 57 days in a period of incapacity for work; or
 - (c) in a case where regulation 4 of the Social Security (Dependency) Amendment Regulations 1992 applies, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days; or
 - (d) in a case where a concessionary payment was made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of regulation 4 of the Social Security (Dependency) Amendment Regulations 1992 ceasing to apply due to attendance on a training course, when the increase is not adjusted as a result of earnings for a continuous period of at least 57 days.
- (4) Regulation 4 of the Social Security (Dependency) Amendment Regulations 1992 shall not apply in any week to a case where a dependant has earnings which exceed £81.50 per week.
- (5) Where an increase is payable as a consequence of a concessionary payment made to compensate for non-payment of an increase under Part IV of the 1992 Act as a consequence of regulation 4 of the Social Security (Dependency) Amendment Regulations 1992 ceasing to apply due to attendance on a training course, no payment shall be made in any week where a dependant has earnings which exceed £81.50 per week.

Transitional provision for the treatment of earnings in respect of increases of long-term incapacity benefit for dependants

26. Where -

- (a) on or after the appointed day -
 - (i) no increase or a reduced amount of the rate of increase of long-term incapacity benefit is payable for an adult dependant as a consequence of regulation 5 (attribution of earnings) or regulation 10 (earnings rules for increases for adult dependants) of the Increases for Dependants Regulations; or
 - (ii) no increase of long-term incapacity benefit is payable for a child dependant as a consequence of section 80(3) and (4) of the 1992 Act and regulation 5 (attribution of earnings) of the Increases for Dependants Regulations; and
- (b) in a case where the increase for an adult dependant is reduced, the amount of reduction would have been less had the 1994 Act and regulations 5 and 10 of the Increases for Dependants Regulations not come into force; and

(a) S.I. 1985/1190.
 (b) S.I. 1989/1690.
 (c) S.I. 1992/3041.

- (c) the earnings which caused there to be no payment of an increase or a reduction of an increase in paragraph (a) had already resulted in no payment of or a reduced payment of an increase before the appointed day,

a payment of an increase shall be made as if the provisions in the 1992 Act in force immediately before the appointed day continued to have effect in respect of those earnings and the 1994 Act had not been enacted and regulations 5 and 10 of the Increases for Dependants Regulations had not come into force.

PART V

MISCELLANEOUS TRANSITIONAL PROVISIONS

Transition from a six day benefit to a seven day benefit

27. Where a payment of an award of sickness benefit, invalidity benefit or severe disablement allowance would have been made in respect of a six day period ending on -

- (i) 13 April 1995, had the 1994 Act not come into force, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of that day shall be 1/6th of the appropriate weekly rate of that benefit or allowance in force on the appointed day;
- (ii) 14 April 1995, had the 1994 Act not come into force, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of 13 April and 14 April 1995 shall, in respect of each such day be 1/6th of the appropriate weekly rate of that benefit or allowance in force on the appointed day.
- (iii) *15 April 1995, had the 1994 Act not come into force, the rate of the transitional award of short-term or long-term incapacity benefit or severe disablement allowance in respect of 13 April, 14 April and 15 April 1995 shall, in respect of each such day, be 1/6th of the appropriate weekly rate of that benefit or allowance in force on the appointed day.*

Transitional provisions for an increase of severe disablement allowance for adult dependants

28. (1) Subject to paragraph (2), where an increase of severe disablement allowance is payable for an adult dependant at any time during a period of 56 days immediately before the appointed day by virtue of section 90 of the 1992 Act, that increase shall continue to be payable and the provisions in regulation 24(2) to (7) shall apply to that increase as if that increase were an increase of long-term incapacity benefit in a transitional case.

(2) Where a person becomes entitled to severe disablement allowance by virtue of -

- (a) section 68(10) of the 1992 Act (treating days of entitlement to disability working allowance as having been days on which a person was both incapable for work and disabled); or
- (b) section 68(10A) of the 1992 Act (treating days engaged in training as having been days on which a person was both incapable for work and disabled)(a),

and an increase had been payable under section 90 of the 1992 Act or paragraph (1) when he was last entitled to that allowance, he shall be entitled to an amount equal to the amount of an increase payable under paragraph (1) if, by reason only of the fact that there is no child for whom he is entitled to an increase under section 80 of the 1992 Act, he would not be entitled to an increase for an adult dependant under the Increases for Dependants Regulations; and the amount payable shall be treated as if it were an increase under paragraph (1).

(a) Section 68(10A) was inserted into the Social Security Contributions and Benefits Act 1992 by section 9(2) of the Social Security (Incapacity for Work) Act 1994.

PART VI

PROVISIONS FOR THE TRANSITION TO THE NEW TESTS OF INCAPACITY FOR WORK

Transitional awards of incapacity benefit

29. A person's entitlement to a transitional award of incapacity benefit shall, except as provided in regulation 31, be subject to him satisfying the tests of incapacity for work under Part XIIA of the 1992 Act(a).

Transitional provision in respect of other benefits

30. A person's continued enjoyment on or after the appointed day of severe disablement allowance or any other advantage under any provision for the purposes of which Part XIIA of the 1992 Act applies shall, except as provided in regulation 31, be subject to satisfying the tests of incapacity for work under that Part of the 1992 Act.

Application of the new tests of incapacity for work

31. (1) Where it has been determined that a person is incapable of work for any purpose of the 1992 Act immediately before the appointed day and on or after the appointed day the all work test applies to him, he shall not be required to satisfy or be treated as having satisfied the condition of entitlement that he is incapable of work in accordance with that test until he has been assessed as to incapacity for work in accordance with regulations made under section 171C of the 1992 Act (the all work test)(b) or until it is determined that he falls within one of the cases mentioned in paragraph (5), so long as he satisfies the condition in paragraph (2).

(2) The condition referred to in paragraph (1) is that, in respect of each day, a person shall be required to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence in each case)(c).

(3) Subject to paragraph (4), a person who falls within one of the cases mentioned in paragraph (5) shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 171C of the 1992 Act (the all work test).

(4) Where it is determined that a person falls within one of the cases mentioned in paragraph 5(a) to (c) and paragraphs (d) to (h) do not apply, that person shall continue to provide evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976; and provided that such evidence is furnished he shall be treated as having satisfied the incapacity for work test in accordance with regulations made under section 171C of the 1992 Act.

(5) The cases referred to in paragraph (3) are -

(a) a person -

- (i) entitled to invalidity benefit on 1 December 1993 and 12 April 1995; and
- (ii) between a period beginning on 1 December 1993 and ending on 13 April 1995, was not capable of work for that period or for two or more periods not separated by a period of more than 56 continuous days; and
- (iii) is aged 58 or over on the appointed day;

(a) Part XIIA was inserted into the Social Security Contributions and Benefits Act 1992 by sections 5 and 6 of the Social Security (Incapacity for Work) Act 1994.

(b) Section 171C was inserted into the Social Security Contributions and Benefits Act 1992 by section 5 of the Social Security (Incapacity for Work) Act 1994.

(c) S.I. 1976/615: relevant amending instruments are S.I. 1982/699, 1987/409, 1991/2284, 1992/247 and 1994/2975.

- (b) a person -
- (i) entitled to *supplementary benefit* on 1 December 1993; and
 - (ii) was incapable of work for a period of not less than 28 weeks immediately before 1 December 1993; and
 - (iii) whose applicable amount included the disability premium on account of his own incapacity on 12 April 1995; and
 - (iv) between the period beginning on 1 December 1993 and ending on 13 April 1995, was incapable of work for that period or for two or more periods not separated by a period of more than 56 continuous days; and
 - (v) is aged 58 or over on the appointed day;
- (c) a person in receipt of a payment of an award of severe disablement allowance under section 68 of the 1992 Act immediately before the appointed day;
- (d) a person who was in receipt of a payment of an award at the highest rate of the care component of disability living allowance immediately before the appointed day and continues to be in receipt of such payment;
- (e) a person who is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (f) a blind person whose name is on a register compiled *under section 27 of the National Assistance (Isle of Man) Act 1951 (an Act of Tynwald)*;
- (g) a person suffering from one of the following conditions -
- (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (h) a doctor approved by the *Department* has certified that person is suffering from any of the following conditions -
- (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological or muscle wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;
 - (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;

Regulations 2, 4, 5, 6, 8, 10 (other than paragraphs (3) and (5)) and 13 are wholly consequential on the enactment of the Social Security (Incapacity for Work) Act 1994. These regulations (other than regulation 2) substitute references to incapacity benefit for references to sickness benefit or invalidity benefit in the principal Regulations; regulation 2 revokes a provision specific to invalidity benefit.

Regulations 7 and 11 amend regulation 18 of and Schedule 3 to the principal Regulations to provide that the provisions on the disallowance of continuation claims which apply to sickness benefit and invalidity benefit are not carried forward into incapacity benefit and also cease to apply to severe disablement allowance.

Regulation 9 substitutes a new regulation 24 into the principal Regulations to provide that awards of incapacity benefit and severe disablement allowance shall be paid at such intervals as the Department determines.

Regulation 10(3) and (5) amends Schedule 1 to the principal Regulations to provide that claims for unemployment benefit may not be treated as claims for any benefit other than unemployment supplement or invalid care allowance.

Regulation 12 amends Schedule 4 to the principal Regulations by providing a one month time limit for both new and repeat claims for incapacity benefit and severe disablement allowance.

5. The Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994 (S.I. 1994/2945).

These Regulations set out the circumstances in which recipients of incapacity benefit are entitled to an increase of that benefit in respect of adult dependants and certain child dependants.

Part I contains commencement and interpretation provisions (regulation 1); provisions as to circumstances in which a person is to be deemed to be wholly or mainly maintaining another person (regulation 2); provisions about the way in which maintenance payments are to be allocated between a spouse and children (regulation 3); provision for treating the amount by which benefit is abated under section 74(3)(a) of the Social Security Administration Act 1992 as being a contribution towards the maintenance of another person (regulation 4) and provision about the period to which earnings are to be attributed (regulation 5).

Part II contains provisions relating to child dependants. Regulation 6 sets out the circumstances in which a person not entitled to child benefit is to be treated as if he were so entitled and regulation 7 sets out the circumstances in which a person who is entitled to child benefit is to be treated as if he were not so entitled. Regulation 8 provides for deeming, in certain circumstances, a person to be contributing to the cost of maintaining a child.

Part III contains provisions relating to adult dependants. Regulation 9 provides for the circumstances in which an increase of incapacity benefit is to be payable for an adult dependant. Regulation 10 sets out the rules about how much an adult dependant may earn if an increase of incapacity benefit is to be payable in respect of him. Regulation 11 deals with the apportionment of payments of occupational pension (which are treated as earnings) where they are paid otherwise than weekly. Regulation 12 sets out the circumstances in which a person is to be deemed to be contributing to the maintenance of an adult dependant. Regulation 13 provides for an increase of short-term incapacity benefit for persons over pensionable age and regulation 14 provides for disqualification from receipt of increase of incapacity benefit in cases of imprisonment and absence abroad.

Part IV makes amendments to the Social Security (Dependency) Regulations 1977 which are consequential on the abolition of sickness and invalidity benefit and the introduction of incapacity benefit.

6. The Social Security (Incapacity Benefit) Regulations 1994 (S.I. 1994/2946).

These Regulations provide for matters concerning entitlement to and the rate of incapacity benefit, which benefit was introduced into Part II (contributory benefits) of the Social Security Contributions and Benefits Act 1992 (c.4) by the amendments to that Act made by sections 1 to 3 of the Social Security (Incapacity for Work) Act 1994.

Part I contains general provisions affecting the citation, commencement and interpretation of these Regulations.

Part II contains various provisions affecting entitlement to incapacity benefit. In particular these relate to the calculation of periods of incapacity (regulations 4 to 6) and periods of entitlement to incapacity benefit (regulation 7). This Part also prescribes the limit of permitted earnings from a councillor's allowance and the method of calculating such earnings (regulations 8 and 9).

Part III contains provision for long-term incapacity benefit to be payable at an increased rate on account of age. Where a person is under the age of 35 on the qualifying date the rate of long-term incapacity benefit is to be increased by £12.15 a week, and where he is over that age but under the age of 45 the rate is to be increased by £6.10 a week (regulation 10).

The qualifying date is normally the first day of the period of incapacity for work in question, but regulations 12 and 13 make special provision for certain persons who have been serving members of the forces and widows.

7. The Social Security (Severe Disablement Allowance) Amendment Regulations 1994 (S.I. 1994/2947).

The Regulations make miscellaneous amendments to the Social Security (Severe Disablement Allowance) Regulations 1984 consequential on the passing of the Social Security (Incapacity for Work) Act 1994, which replaces sickness and invalidity benefits under the Social Security Contributions and Benefits Act 1992 with a new benefit known as incapacity benefit.

8. The Social Security (Medical Evidence) Amendment Regulations 1994 (S.I. 1994/2975).

These Regulations amend the Social Security (Medical Evidence) Regulations 1976 ("the principal Regulations"), which set out the medical evidence required for determining capacity for work in relation to benefits other than industrial injuries benefit.

These Regulations are consequential on the Social Security (Incapacity for Work) Act 1994 ("the 1994 Act"), which comes into force on 13th April 1995. That Act provides generally for determination of capacity for work for the purposes of the Social Security Contributions and Benefits Act 1992 and in particular provides for two tests of incapacity (the own occupation test and the all work test). These Regulations make consequential amendments to the principal Regulations in preparation for the coming into force of the 1994 Act, including:

- (a) provision that a claimant's obligation to provide a doctor's statement or other evidence specified in the principal Regulations applies only in respect of days up to assessment for the purposes of the all work test (regulation 2(3)(a)(i); and

- (b) provision for a new form of doctor's statement in cases where the all work test applies (regulation 2(3)(a)(ii) and the Schedule).

9. The Social Security (Incapacity for Work) (General) Regulations 1994 (S.I. 1994/311).

These Regulations contain provisions affecting determinations as to capacity for work for the purposes of the Social Security Contributions and Benefits Act 1992 ("the Act").

Part I contains general provisions, including commencement, definitions and application. These Regulations do not apply for the purposes of industrial injuries benefit.

Part II contains general provisions relating to incapacity for work, including provisions which are supplementary to Part XIA of the Act and provisions relating to adjudication:

Regulation 4 defines "remunerative work" for the purposes of the own occupation test (which is set out in section 171B of the Act) and regulation 5 provides for the application of that test to persons with more than one occupation.

Regulations 6 to 9 provide for the evidence of information required for the purposes of determining capacity for work and the consequences of failing to provide it. In particular a person may be called for a medical examination and may be treated as capable of work if he fails to attend.

Regulations 10 to 15 provide for the circumstances in which a person is to be treated as incapable of work.

Regulations 16 to 18 provide for the circumstances in which a person is to be treated as capable of work or disqualified for receiving certain benefits. Subject to certain exceptions, persons are to be treated as capable of work for the whole of any week in which they do work which is not in an exempt category and within defined limits. Persons may also be treated as capable of work or disqualified for receiving benefit on the grounds of misconduct or failure to observe certain rules of behaviour.

Regulations 19 to 22 affect adjudication on questions relating to incapacity for work. In particular they provide for a determination in relation to one benefit to be conclusive for other benefits. They also provide for social security appeal tribunals to sit with a medical assessor in certain cases for the constitution of panels of such assessors.

Part III relates to the all work test, which is defined in these Regulations in accordance with section 30C(1) of the Act:

Regulation 23 provides for interpretation of Part III and the Schedule.

Regulations 24 to 26 set out the all work test and establish how it is to be satisfied.

Regulation 27 states when a doctor approved by the Department may determine that a person who does not satisfy the all work test may nonetheless be treated as incapable of work.

Regulation 28 sets out the conditions whereby the all work test shall be treated as satisfied until a person has been assessed or until he is treated as capable of work as the case may be.

The Schedule sets out the disabilities which may make a person incapable of work. Part I of the Schedule deals with physical disabilities and Part II with mental disabilities.

10. The Social Security (Incapacity Benefit) (Transitional) Regulations 1994 (S.I.1994/310).

This instrument contains the first regulations made under section 4 and section 7 of the Social Security (Incapacity for Work) Act 1994 (c.18) ("the 1994 Act").

Part I of the Regulations relates to the citation, commencement and interpretation.

Part II contains the provisions common to the transition to incapacity benefit from sickness benefit and invalidity benefit. Regulations 2 to 4 enable days before 13 April 1995 to be taken into account for the purposes of incapacity benefit and to enable days of incapacity for work after the 13 April 1995 to form part of a period of incapacity for work beginning before the 13 April 1995. Regulations 5, 6 and 8 make provision for late claims for sickness benefit and invalidity benefit, interchange with other benefits and payments of transitional awards. Regulation 7 enables persons who were deemed to be incapable of work before 13 April 1995 to continue to be so deemed after 13 April 1995. Regulations 9 and 10 make provisions for the disqualification and suspension of payment of incapacity benefit.

Part III makes provision for the transition to incapacity benefit from sickness benefit. Regulation 11 provides for awards of sickness benefit to be treated as awards of short-term incapacity benefit. Regulations 12 and 13 enable awards of incapacity benefit to be paid at the transitional rate on termination of employment after a period of entitlement to disability working allowance or a period engaged in training for work in certain circumstances. Regulation 14 provides that where a person was entitled to sickness benefit in respect of an industrial injury, the contribution conditions shall be taken to be satisfied for the purpose of entitlement to short-term incapacity benefit for dependants. Regulation 16 makes provision in respect of the treatment of earnings at the changeover period.

Part IV contains the provisions for the transition to incapacity benefit from invalidity benefit. Regulation 17 provides that awards from invalidity benefit shall be treated as awards of long-term incapacity benefit. Regulation 18 provides the rate at which long-term incapacity benefit shall be payable in transitional cases. Regulations 19 and 20 enable an award of incapacity benefit to be paid at the transitional rate on termination of a period of entitlement to disability working allowance or on termination of a period engaged in training for work in certain circumstances. Regulation 21 enables the transitional rate of long-term incapacity benefit to be paid where a person is incapacitated in respect of an industrial injury. Regulation 22 provides for the adjustment of benefit where a guaranteed minimum pension is in payment. Regulation 23 makes transitional provision for an increase of a Category A retirement pension for incapacity. Regulations 24 and 25 provide for the increase in the rate of long-term incapacity benefit in respect of dependants in transitional cases. Regulation 26 makes provision for the treatment of earnings at the changeover period.

Part V contains miscellaneous transitional provisions in respect of the rate of payment of incapacity benefit in the week that the benefit is introduced and for an increase of severe disablement allowance for dependants (regulations 27 and 28).

Part VI contains provisions for the transition to the new tests of incapacity for work. Regulations 29 and 30 provide for the new tests of incapacity for work to apply to existing cases where incapacity is in question. Regulation 31 makes provisions to apply the new tests to existing cases and provides for categories of persons to be exempt from the all new work test. Regulation 32 enables days of incapacity arising before the 13 April 1995 to be taken into account for the purposes of the new medical tests.